Official Gazette

REPUBLIC OF THE PHILIPPINES

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OFFICIAL WEEK IN REVIEW

December 21.—PRESIDENT Garcia appealed today to farmers to report cases of rice-buying by NARIC and ACCFA agents from traders under the rice procurement program of the Administration.

The President said he had directed the NARIC and the ACCFA to buy direct from farmers for whose benefit the program had been launched. He expressed his desire to have this directive strictly complied with and warned that violations would be dealt with accordingly.

Pointing out that the sum made available for the rice procurement program up to March next year was ₱15 million, the President said he would like to see this amount spread over among as many farmers as possible and encourage them to continue increasing their production in line with his policy of achieving self-sufficiency in this staple commodity.

The Chief Executive reiterated that for the first time in history, this country had produced more than it needed owing to improved methods of planting. He said that this was a new experience for the Philippines and that he hoped the financing system of the price support program would eventually be perfected.

The President had issued the directive for the NARIC and the ACCFA to purchase direct from farmers on receiving reports that government agents often obtain their stocks from traders. The President said that in such cases it was the middlemen who profited instead of the farmers.

The Chief Executive ordered NARIC and ACCFA officials to enforce his directive strictly. He also circularized all governors and mayors to cooperate in the enforcement of the order. The ACCFA will take care of the procurement of palay in places throughout the country where there are FACOMAs organized, in conjunction with the procurement effort of the NARIC.

The President spent the day at his Bohol Avenue residence working on some state papers and sorting various reports of department secretaries on the accomplishments and needs of their respective departments.

The President needs this data in the preparation of his state-of-the-nation message which he will deliver before a joint session of Congress when it convenes next month.

The Chief Executive started the day by hearing mass. With him at the mass were Mrs. Garcia, Lt. Melchor Fronda, and members of the household.

After breakfast with Mrs. Garcia and Fr. Tugade, the President spent some time reading the Sunday morning newspapers. He also took a brief stroll in the lawn where he watched a gardener put decorations on a small Christmas tree.

The President did not receive any caller the whole day.

December 22.—PRESIDENT Garcia today advocated the formation of an anti-graft court to try cases filed against government officials and employees in connection with the performance of their official duties.

The President this morning conferred with Sen. Quintin Paredes, chairman of the Senate Committee on justice, and Justice Secretary Jesus Barrera on the practicability of setting up such a court which would specialize on graft and corruption cases.

The Chief Executive instructed Secretary Barrera to prepare the draft of a bill providing for the creation of an anti-graft court which he will recommend for enactment in the next congressional session. The court, as planned, will be under the judiciary branch of the government.

The President today also:

(1) Convoked a special meeting of his Cabinet at 4 p.m. tomorrow to resume consideration of the fiscal committee report on proposed budget slashes as well as the rice and corn price support program; and

(2) Summoned Public Works Secretary Florencio Moreno, Chairman Rodolfo Maslog of the Reparations Commission and Jose Laurel III at a breakfast conference tomorrow morning to discuss the financing of the Marikina River multipurpose project and the Telecommunications expansion project.

The fiscal committee which had been formed by the Cabinet to recommend reductions in the budgets of various offices in the executive department in order to meet expected deficits in the general fund during the current fiscal year, submitted its reports and recommendations at the Cabinet meeting last week.

The Cabinet did not finish consideration of the report owing to lack of time. The President then decided to call a special meeting to resume discussions on the matter. Last week's meeting was to have been the last of the Cabinet during the year.

Secretary Moreno and Laurel III had just arrived from Tokyo where they followed up negotiations with Japanese officials for the financing of the Marikina multi-purpose and Telecom projects. Assistance by the Japanese Government for these two projects were among those promised to President Garcia during his state visit in Japan early this month.

The President also received Gov. Manuel Barretto and Rep. Genaro Magsaysay of Zambales.

In the afternoon, the President received Sen. Oscar Ledesma, who paid a call on the Chief Executive after his return from official missions abroad.

Last caller of the President today was Rep. Bartolome Cabangbang of Bohol. No details were released by Malacañang on the Garcia–Cabangbang conference.

December 23.—THIS morning the President received the verbal report of a three-man group which stayed in Japan after his state visit to negotiate with a Japanese panel the terms and conditions of the loan for the construction of the Marikina multipurpose project and the nationwide telecommunication network.

The conference, held at the Quezon City residence of President Garcia, started about 8 a.m. and lasted until about noon. Present were Public Works Secretary Florencio Moreno, Reparations Commission Chairman Rodolfo Maslog, and Jose Laurel III. Also at the conference were Public Works Director Julian Buendia and Jose Alfonso of Telecommunications.

The President instructed the group to prepare a formal report to be presented to the Council of State at its next meeting.

The President discussed with the group the terms of agreement of the deferred payment formula, including the rate of interest of not more than the rate charged by the World Bank, which does not exceed 5.75 per cent per annum.

Regarding the *modus operandi,* Moreno, as head of the Marikina Committee, shall determine the goods and services required, and the Reparations Commission, through Maslog and Lanuza, shall take charge of the procurement in accordance with the Reparations Act. Evaluation of bids received shall be made by the Moreno committee, in behalf of the end-user agencies, before final terms and conditions of procurement are to be agreed upon by the Reparations Mission in Japan, and the Japanese suppliers or contractors. The loan agreement on the *yen* value of the procurement under the deferred repayment formula shall be signed by both Moreno and Maslog on behalf of their respective agencies.

The telecommunications project will provide extensive and modern telephone, telegraph, and radio facilities to the people of the Philippines as well as enhance the overall economic and industrial development of the country.

The expanded telecommunications system envisions the extension of technical aid by the Bureau of Telecommunications to all *bona fide* tele-

phone franchise holders, especially the small Filipino privately owned telephone systems, in order to improve and expand their services in towns and provinces and to interconnect them with each other through the government's interprovincial transmission facilities.

The President also conferred with American Ambassador Charles Bohlen; Paul Summers, local ICA head; and Benjamin Baker Fogler, management consultant detailed with ACCFA who suggested the enactment of a law to improve the effectiveness of the work of the ACCFA in extending financial aid to small farmers.

President Garcia informed the American officials that he will consider the suggestion.

The President also received Defense Secretary Jesus Vargas and Rep. Pedro Venida of Camarines Norte.

Shortly before noon, the President and Mrs. Garcia motored to the residence of Don Ramon Fernandez to express personally their condolence for the death of Mrs. Fernandez.

President Garcia today proclaimed Wednesday, December 31, a special public holiday "in order to enable the people to enjoy an uninterrupted New Year's holiday, without prejudicing public interests."

Rizal Day, December 30, falls on Tuesday, while New Year, January 1, 1959, falls on Thursday, the days immediately preceding and following the proclaimed special public holiday.

The President also signed today Proclamation No. 551, extending further the period for the fund-raising campaign of the Boy Scouts of the Philippines for the Tenth World Jamboree up to June 30 next year.

In extending the period which expires on December 31 this year, the Chief Executive pointed out that the fund raising organization of the Boy Scouts of the Philippines needed additional time to raise sufficient funds for the successful holding of the jamboree.

The fund-raising campaign was originally set for July 1 to August 15 and was later extended up to December 31 this year by the President.

Meanwhile, Executive Secretary Juan C. Pajo this morning received Boy Scouts officials at his office, who called to thresh out details for the holding of the Tenth Boy Scouts World Jamboree.

The BSP officials also presented to the executive secretary, who is a member of the National Executive Board of the BSP and chairman of the finance committee of the Tenth Boy Scouts World Jamboree, the "National Council Flag" of the Boy Scouts of the Philippines.

The Tenth Boy Scouts World Jamboree will be held at the Makiling National Park, Los Baños, Laguna, from July 17 to 26, 1959. Some 12,000 boy scouts representing 70 countries from all over the world are expected to attend the jamboree.

Those who called on Secretary Pajo were Antonio C. Delgado, executive vice-chairman, Tenth World Jamboree; Francisco "Koko" Trinidad, member, program committee; Jose A. Panlilio, national scout director, BSP; and Gregorio I. Estonanto, PRO.

PRESIDENT Garcia awarded the Philippine Legion of Honor, degree of Commander, to Gen. Thomas D. White, chief of staff of the United States Air Force, in a ceremony held this afternoon in the ceremonial hall of Malacañang.

The award was given to Gen. White for "eminently meritorious and distinguished services rendered to the Republic of the Philippines while serving as deputy commander of the 13th US Air Force in the South Pacific theater of Operations."

The visiting chief of the US air force was accorded full military honors upon his arrival at Malacañang by an honor guard composed of elements from the Presidential Guards Battalion.

After acknowledging the honors, Gen. White went up the Palace accompanied by US Ambassador Charles E. Bohlen; Maj. Gen. Thomas J.

Moorman, Jr., 13th Air Force commanding general; Lt. Gen. Manuel F. Cabal, vice-chief of staff, AFP; Brig. Gen. Pedro Q. Molina, PAF chief; and Lt. Col. Emilio O. Borromeo, senior presidential aide.

President Garcia received Gen. White, Ambassador Bohlen, and Gen. Moorman in the music room and together they proceeded to the ceremonial hall where the presentation of the award was made.

Among those who witnessed the ceremonies were National Defense Secretary Jesus Vargas; Lt. Col. L. S. Nickodem, air attache of the US Embassy; T. I. Ahern, aide to Gen. White; Capt. J. O. O'Neal, assistant air attache of the US Embassy; and Mrs. T. D. White, Mrs. L. S. Nickodem, Mrs. T. J. Moorman, Jr., and Mrs. T. O. O'Neal.

In the evening, the President presided over the last meeting of the Cabinet for the year.

President Garcia called a special meeting of the Cabinet to take up the budgetary deficit brought about by the unexpected reduction in the revenue collections this year.

The President and the First Lady also attended the Christmas party of Malacañang employees held at social hall of the Palace this evening after the Cabinet meeting.

Troubled by a deficit of ₱16 million this fiscal year, the Cabinet at its four-hour meeting, last of the year, adopted at its meeting today 11 alternative measures to wipe out the deficit.

With these measures, the Garcia administration expects to prevent layoffs next year and to continue with all the services as provided for in the original appropriations act.

During the year-end meeting, the Cabinet also:

1. Approved in principle the application of Batjak, Inc., an industrial firm with 80 per cent Filipino capitalization, to barter Philippine copra with five German oil mills to be set up in five different places in the Philippines. A condition calls for the shipment of 150,000 tons of copra a month, for 10 months, to cover the cost of the mills. The mills offered will be verified by the Philippine mission in Bonn, West Germany, and the shipment of copra will be subject to certain speculations set up by the government.

The incorporators of Batjak, Inc., are Tereso Dumon of Cebu, Cesar Seballos, James Keister, Alejandro Beltran, and Renato Bejar. Twenty per cent of the capital stocks are owned by Americans.

2. Mapped out the details of the support program for rice and corn producers. President Garcia warned NARIC and ACCFA officials to keep their agents buying the cereals, at the price support schedule, directly from farmers and producers.

3. Passed a resolution expressing their best wishes for a Merry Christmas and Happy New Year to President and Mrs. Garcia, and their thanks for the privilege of serving the Administration.

In addition to the restoration of the Department of Education appropriation, the fiscal committee of the Cabinet, headed by Finance Secretary Jaime Hernandez, also restored the originally proposed slash of ₱183,000 from the labor department budget.

The defense budget slash was thinned out from ₱30 million to only ₱7 million.

The cuts were urged in order to stave off the expected deficit of ₱73,896,560 this fiscal year ending June 30, 1959. Because of some protest and consternation from officials as well as private sectors, much of the original slashes amounting to ₱73 million, or the equivalent of the expected deficit, had been restored in the course of the protacted series of studies by the Cabinet's fiscal committee.

As of this day, there was still a deficit of about ₱16 million.

The 11-point recommendation of the fiscal committee (composed of Hernandez, Budget Commissioner Dominador Aytona, and Auditor Pedro Gimenez), containing alternative measures to privide funds, was approved by the President and the Cabinet.

President Garcia last evening told the Malacañang employees that Christmas is an occasion not only for merry-making but also a day of thanksgiving and prayer to the Good Lord that the many things He has bestowed upon the people shall continue to the end of the ensuing year, 1959.

The President said the people have a lot to be thankful for. He said the country has attained self-sufficiency in food, and will soon be self-sufficient in clothing. He pointed out that the nations' yearly importation of textiles had dropped from ₱300 million to about ₱100 million.

The President also told the Malacañang employees that the Philippines has the third largest iron deposit in the world, and that, once tapped and exploited, these deposits in Surigao, as well as the others in Sibuguey and Camarines, would be exporting finished iron products' instead of importing construction materials which this country can very well produce.

The President and the First Lady took their time out of a tight official schedule to enjoy a few moments of relaxation with their official family at the traditional annual Christmas party for some 1,000 Malacañang employees, held at the Malacañang social hall from 3 to 9:30 p.m.

The six-hour long Christmas program was full of suspense and excitement, not only because of the raffle which gave away 120 prizes to lucky ticket holders, but also because of participation of the Presidential Guard Battalion which contributed good and entertaining members.

The President and the First Lady awarded suprise gift packages. The First Lady's gift package went to Mariano while the Presidential prize went to Javier Aquino.

But the greatest and most welcome gift from the President was his message to the temporary employees that all those who had received notice of termination of service on December 31 will not be laid off.

The message was brought to the employees by Executive Secretary Juan C. Pajo, who took advantage of a brief recess in the Cabinet meeting to go downstairs and join his employees, not only to wish them a very merry Christmas but, more important, to bring the President's message.

The President and his lady also delighted the employees with the kuracha, their favorite dance, which they dance together only on very special occasions.

December 24.—THIS morning, the President went over the pardon papers of several prisoners and signed the conditional release of 50 inmates of the insular penitentiary.

The President likewise wrote his Christmas message to the nation keynoted on a nation-wide prayer for "World peace and universal brotherhood."

"I wish to give thanks to Our Lord," the President wrote, "for having guided us through the year."

The President likewise conferred with Executive Secretary Juan C. Pajo on pending state papers.

President Garcia this morning laid down the basis for the creation of a graft court free from pressure and independent from the executive and legislative branches of the government.

In a conference with House Majority Floor Leader Jose Aldeguer and Rep. Pedro Trono of Iloilo at Malacañang this morning, the President said the projected graft court will be the answer to the opposition's charges of graft and corruption.

To assure the court's independence, the President said, he will press for appointments of members of the judiciary and pattern the body after those in the appellate courts where the justices have definite tenure of offices, thereby eliminating all possibilities of political pressure.

The President said that if the opposition has complaints against any government official, including the Chief Executive, they will have an independent body to turn to. He said he does not intend to cover up for anyone no matter who he may be.

Stating that he wants a body that cannot be interfered with by anybody, the President added that the projected court, being in the judicial branch of the government, will foil any attempt at "whitewash".

The President today authorized the release of a total of ₱150,000 for the establishment of three breeding stations by the Bureau of Animal Industry.

The amount of ₱150,000 was made in three separate releases as follows: ₱50,000, authorized under Republic Act No. 1995, for a breeding station in Gamu, Isabela; ₱50,000, authorized under Republic Act No. 1981 for another breeding station in Himamaylan, Negros Occidental; and ₱50,000 authorized under Republic Act No. 1960 for a third breeding station in Bobon, Samar.

These breeding stations will serve as demonstration centers for practical and scientific livestock and poultry production in these regions.

The President this day accepted the retirement of Lieut. Gen. Alfonso Arellano, chief of staff of the Armed Forces of the Philippines, effective December 31, 1958.

At the same time, President Garcia extended an *ad interim* appointment to Maj. Gen. Manuel F. Cabal as AFP chief of staff and promoted him to the rank of lieutenant-general.

To take the place vacated by the newly-appointed AFP head, President Garcia appointed Brig. Gen. Pelagio A. Cruz, who was also promoted to the rank of major-general.

Brig. Gen. Isagani Campo, commanding general of the 2nd military area, was appointed chief of the Philippine Constabulary.

The appointments of Cruz and Campo are both *ad interim* in nature.

President Garcia today appointed Capt. Francisco H. Calinawan, presidential performance officer and concurrently vice-chairman of the Presidential Committee on Administration Performance Efficiency (PCAPE), as assistant general manager of the Manila Railroad Company effective January 1.

Calinawan's appointment was favorably endorsed to the President by the board of directors of the MRR in their resolution dated December 11, 1958, and is in line with the Administration's policy of rewarding public servants for meritorious services rendered to the government.

As presidential performance officer and vice-chairman of the PCAPE, Calinawan was awarded the Presidential Gold Medal for Leadership "in recognition of his distinguished and admirable record in the field of leadership and public administration."

The new railroad executive, who holds the rank of captain in the Corps of Engineers, AFP, has tendered his resignation from the Armed Forces to accept his new position. He lacks one more year to qualify him for optional retirement.

PRESIDENT Garcia this evening spent his second Christmas eve in Malacañang and his first in his new private residence in Bohol Avenue, Quezon City.

President Garcia and Mrs. Garcia heard midnight mass at the Malacañang chapel.

Earlier, the President and the First Lady entertained their close friends and relatives at a Christmas Eve dinner at their private residence in Quezon City.

A spokesman said the presidential family had a simple Christmas Eve affair.

From Bohol Avenue, the President and the First Lady motored to Malacañang chapel at 11:30 this evening for the midnight mass.

December 25.—PRESIDENT and Mrs. Garcia spent their second Christmas Day in Malacañang quietly.

They observed Christmas Eve with the traditional midnight mass at Malacañang and stayed at the Palace to receive new visitors, close relatives, and intimate friends.

Although they stayed up very late on Christmas eve, the President and the First Lady woke up early this morning to be able to greet their daughter, Linda, and their son-in-law, Fernando Campos, who are in the United States.

At 9 o'clock, the President placed an overseas phone call to his daughter and son-in-law, whom they located in New York City. The Camposes have decided to spend Christmas and New Year in New York City.

The President and Mrs. Garcia alternated at the phone in exchanging greetings with their only daughter and son-in-law. The phone call lasted for ten minutes.

After a late breakfast, the President received Lt. Gen. Alfonso Arellano, whose retirement as chief of staff of the Armed Forces was accepted by President Garcia effective December 31, of this year.

The retiring chief of staff called on the President to express his gratitude for the approval of his retirement. Gen. Arellano had thrice applied for retirement although his tour of duty will expire next year.

Earlier this morning, Maj. Gen. Manuel F. Cabal, vice-chief of staff and incoming chief of staff of the AFP, joined the President and Mrs. Garcia at a midnight mass at the Malacañang chapel. Cabal is scheduled to be promoted in rank. He will get his third star upon his assumption of office as chief of staff of the Armed Forces.

December 26.—PRESIDENT Garcia and his party arrived in Baguio this afternoon after an almost five-hour uneventful trip from Manila.

The Chief Executive will be guest speaker at the conference of writers belonging to the Philippine Center of the P.E.N. tomorrow morning at Pines Hotel here.

The President, with Assistant Executive Secretary Sofronio C. Quimson, left his private residence on Bohol Avenue at 8:30 a.m.

Traveling at moderate speed, the party stopped twice on the way, first at Tarlac town for a five-minute break, and at Sison, Pangasinan, for refueling.

President Garcia was met at Sison by officials of the Baguio City police department, headed by Maj. Federico M. Mandapat, acting police chief, Lt. Vicente Crisologo, and Lt. Eusebio Bembo, who escorted the party up to Baguio.

The President had his lunch at 1:30 p.m. after a ten-minute rest, after which he gave a short press conference.

Later in the afternoon, after a brief rest, the President closetted himself in the Guest House and went over the reports submitted by the various department secretaries containing data which he may be able to use in his state-of-the-nation address before Congress when it convenes next month.

He did not receive any callers.

The President sent today the following message to Manila Mayor Arsenio H. Lacson on the occasion of the latter's birthday anniversary:

> MRS. GARCIA JOINS ME IN WISHING YOU MANY HAPPY RETURNS OF THE DAY. KINDEST REGARDS.
>
> PRESIDENT GARCIA

PRESIDENT Garcia today directed the National Rice and Corn Corporation and the Agricultural Credit and Cooperative Financing Administration to buy rice direct from farmers, and not from middlemen.

The directive of the President was made known to provincial governors and city mayors in a circular sent to them by Executive Secretary Juan C. Pajo. Secretary Pajo enjoined all local officials to extend their cooperation to the NARIC and the ACCFA in the enforcement of the directive. He also requested the provincial governors and city mayors to transmit the contents of the circular to all local officials.

The President, at the same time, appealed to farmers to report cases of rice-buying by government agents from middlemen so that the guilty parties can be dealt with accordingly.

The President issued the directive upon receiving reports that NARIC and ACCFA agents often obtain their stocks from traders who buy the palay from the farmers at a much lower price. The President pointed out that the government program sought to benefit the farmers and not the middlemen.

The President pointed out that he had made available for the rice procurement program up to March next year the sum of ₱15 million and would like to see this amount spread as widely as possible to encourage the farmers to increase their production in line with the self-sufficiency program in rice.

The President pointed out that for the first time in its entire history, the Philippines will be producing more than it needs as a result of improved methods of planting. He said this is a novel experience for the country, and expressed hope that the price support program would eventually be perfected.

The President urged all provincial governors and city mayors as well as local officials, to extend their full cooperation to the NARIC and the ACCFA in the enforcement of his directive.

December 27.—THIS morning, the Chief Executive had for breakfast guests Mayor Alfonso Tabora and Augusto Espiritu, director of the Central Bank.

After breakfast, President Garcia received officers of the Philippine Military Academy headed by Brig. Gen. Manuel Flores, superintendent, who paid a courtesy call on their commander-in-chief.

The PMA officers invited the Chief Executive to be the guest speaker during the academy's commencement exercises on April 19 next year.

Gen. Flores was accompanied by Col. Horacio Farolan, Col. Blas Alejandre, Lt. Col. Federico Calma, Major Angel Navarro, Capt. Raymundo Lerma, and Lt. Filemon Valencerina.

President Garcia addressed this morning the opening of the National Writers Conference sponsored by the Philippine center of International PEN (poets, essayists, novelists).

The conference, which will last for three days, is being held at the Pines Hotel. Theme of the meet is "The Filipino Writer and National Growth."

The President was introduced by Alfredo T. Morales, chairman of the organization. Raul Ingles, conference coordinator, delivered the welcome address.

After the opening session of the conference, the President met local and foreign delegates to the meet and later posed for pictures with them.

On the invitation of Baguio City Mayor Alfonso Tabora, the Chief Executive went on a short drive around the city and stopped at the city market which, according to Tabora, is the cleanest in the country. President Garcia visited the meat and fish sections of the market, stopping at various stalls to shake hands and talk with vendors.

He was accompanied in the market tour by Tabora, Justice Buenaventura Ocampo, chairman of the Presidential Committee on Administration Performance Efficiency, and Assistant Executive Secretary Sofronio Quimson.

From the Market, the President returned to the Pines Hotel where he was guest at a luncheon given by the PEN conference delegates. He listened to Dr. Encarnacion Alzona's post-luncheon lecture on "The Tradition of Freedom in Filipino Writing."

IN the afternoon, the Chief Executive received Rep. Ramon P. Mitra of Mountain Province, Gov. Bado Dangwa, Vice-Mayor Bienvenido Yandoc, and Councilor Filomeno Biscocho, who paid their respects to the President.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 550

DECLARING WEDNESDAY, DECEMBER 31, 1958, AS A SPECIAL PUBLIC HOLIDAY

WHEREAS, the thirtieth day (Tuesday) of December, 1958, and the first day (Thursday) of January, 1959, being holidays, the thirty-first day (Wednesday) of December, 1958, may be declared a special public holiday to enable the people to enjoy an uninterrupted Christmas holiday without prejudice to the public interests;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby proclaim Wednesday, December thirty-first, nineteen hundred and fifty-eight, as a special public holiday.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of December, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

[SEAL] CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 551

FURTHER EXTENDING THE FUND CAMPAIGN OF THE BOY SCOUTS OF THE PHILIPPINES FOR THE 10TH WORLD JAMBOREE

WHEREAS, the period from July 1 to August 15, 1958, was originally set aside for the Boy Scouts of the Philip-

pines to conduct a fund campaign for the purpose of raising funds to help in the preparations and holding in the Philippines of the 10th Boy Scouts World Jamboree;

WHEREAS, the organization of the fund campaign group for the goal set by the Boy Scouts of the Philippines and the start of its operations took time and the period of 45 days originally granted was insufficient to produce the results desired, in view of which the said period was extended to December 31st, 1958, under Proclamation No. 524, dated August 6, 1958; and

WHEREAS, the fund campaign organization of the Boy Scouts of the Philippines is in need of additional time to raise sufficient funds for the successful holding of the 10th World Jamboree in the Philippines;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, de hereby further extend the national fund campaign of the Boy Scouts of the Philippines up to June 30, 1959.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 23rd day of December, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 176

December 3, 1958

APPOINTING PROVINCIAL FISCAL JANUARIO LAGROSAS OF LANAO AS ACTING CITY ATTORNEY OF ILIGAN CITY.

In the interest of the public service and pursuant to the provisions of Section 1679 of the Revised Administrative Code, Mr. Januario Lagrosas, Provincial Fiscal of Lanao, is hereby appointed Acting City Attorney of Iligan City, during the absence of City Attorney Cicero C. Jurado, in connection with his official trip to Manila, effective December 3, 1958, and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 177

December 5, 1958

DESIGNATING SPECIAL ATTORNEY RAFAEL SILVA OF THE PROSECUTION DIVISION TO ASSIST THE PROVINCIAL FISCAL OF BATANGAS.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Rafael Silva, Special Attorney in the Prosecution Division, this Department, is hereby designated to assist the Provincial Fiscal of Batangas in the investigation and prosecution if warranted, of the criminal case against Policemen Jose Diez, Vicente Lijarzo and Consorcio Noche, all of Taal, Batangas, for frustrated murder, effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 178

December 9, 1958

APPOINTING CITY ATTORNEY LININDING PANGANDAMAN OF MARAWI CITY AS ACTING PROVINCIAL FISCAL OF LANAO.

In the interest of the public service and pursuant to the provisions of Section 1679 of the Revised Administrative Code, Mr. Lininding Pangandaman, City Attorney of Marawi City, is hereby appointed Acting Provincial Fiscal of Lanao, in the investigation and prosecution of Criminal Cases Nos. 2354 and 2364, entitled "People *vs.* Jesus Galvez and Sundad Macabangon" and "People *vs.* Rufino Laplap", respectively, both for Grave Coercion, effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 179

December 10, 1958

DESIGNATING MISS EUFRACIA ALFONSO OF THE LAND REGISTRATION COMMISSION TO ACT AS ACTING REGISTER OF DEEDS FOR THE PROVINCE OF BOHOL.

In the interest of public service, and pursuant to the provisions of Section 201 of the Revised Administrative Code, as amended by Republic Act No. 1138, Miss Eufracia Alfonso of the Land Registration Commission, Manila, is hereby designated to act as Acting Register of Deeds for the province of Bohol, effective upon assumption of duty, until such time as a regular Register of Deeds is appointed to said position. Under this designation, Miss Alfonso is hereby authorized to collect the difference between her actual salary and that of the Register of Deeds during her incumbency.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 180

December 9, 1958

DESIGNATING HON. ANTONIO CAÑIZARES, DISTRICT JUDGE OF MANILA, BRANCH IV, TO SIT TEMPORARILY AS JUDGE OF THE COURT OF INDUSTRIAL RELATIONS.

Pursuant to the provisions of Section 1 of Commonwealth Act No. 103, as amended, and upon request of the Presiding Judge of the Court of Industrial Relations, the Honorable Antonio Cañizares, District Judge of Manila, Branch IV, is hereby designated to sit temporarily as Judge of the Court of Industrial Relations in connection

with Case No. 746–V(12), entitled "Naric Workers' Union, Petitioner *vs.* National Rice and Corn Corporation (NARIC), Respondent", in order to reach a decision therein.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 181

December 9, 1958

AUTHORIZING HON. RAYMUNDO VILLACETE, DISTRICT JUDGE OF ROMBLON TO HOLD COURT IN SAN AGUSTIN, SAME PROVINCE.

In the interest of the administration of justice and pursuant to the provisions of Section 56 of Republic Act 296, as amended, the Honorable Raymundo Villacete, District Judge, Romblon, is hereby authorized to hold court in San Agustin, same province, during the month of February, 1959, for the purpose of trying all kinds of cases and to enter judgments therein.

JESUS G. BARRERA
Secretary of Justice

Department of Commerce and Industry

BUREAU OF COMMERCE

COMMERCE ADMINISTRATIVE ORDER No. 7–1

September 9, 1958

TO AMEND CERTAIN RULES IN COMMERCE ADMINISTRATIVE ORDER NO. 7 ON STANDARDIZATION AND INSPECTION OF PHILIPPINE MANILA COPAL, AND OTHER PURPOSES.

Pursuant to the provisions of Section 79(B) of the Revised Administrative Code and Sections 155 and 156 of Executive Order No. 94, series of 1947, and on recommendation of the Director of Commerce, the following amendments to Commerce Administrative Order No. 7, dated September 13, 1951 and which took effect on June 6, 1952, on the standardization and inspection of Philippine Manila Copal are hereby promulgated for the information and guidance of all concerned:

Definition of Terms

1. In Rule 1, and for the purpose of this Commerce Administrative Order, the following words are added and defined, as follows:

"Clear"—free from impurity, defect or blemish.

"Translucent"—admitting passage of light but diffusing it so that objects beyond cannot be clearly distinguished.

Domestic and Export Trade

2. The first sentence of Rule 2 is hereby modified to read, thus:

> "For the domestic and export trade, eight (8) grades of Philippine Manila Copal are hereby established."

Paragraph 2 of Rule 2 is also modified to read as follows:

> "Insoluble and/or partially soluble Philippine Manila Copal is hereby designated as grade No. 8. This particular grade of Philippine Manila Copal shall not be allowed for export unless it has been chemically analyzed by a government laboratory."

3. Rule 3 in the original Order is hereby repealed and the grades of Philippine Manila Copal, together with their descriptions, are shown in the table hereunder:

Standard Grades of Philippine Manila Copal

Grade	Size	Cleanliness	Color	Solubility
1	Bold pieces	Very clean, scraped, clear, soft	White to amber translucent	Insoluble deposit 2 cc. or 95% to 100% soluble in etyle alcohol.
2	Bold pieces	Clean, scraped, soft, with very little foreign matter	White to amber	Insoluble deposit 3 cc. or 92.5% but below 95% soluble in ethyl alcohol.
3	Bold and/or Nub pieces	Clean, scraped, with some foreign matter	Brown and/or yellow	Insoluble deposit 3 cc. or 90% but below 92.5% soluble in ethyl alcohol.
4	Nub pieces	Clean, scraped, with some bark or fiber, mixture of grades 1, 2 and 3	Mixed colors	Insoluble deposit 3 cc. or 90% but below 92.5% soluble in ethyl alcohol.
5	Bold colors (sorts)	Contain some bark, wood and foreign matter	Dark	Insoluble deposit 5 to 7 cc. or 87.5% but below 90% soluble in ethyl alcohol.
6	Chips	Contain some bark and wood	Mixed colors	Insoluble deposit 4 to 5 cc. or 90% but below 92.5% soluble in ethyl alcohol.
7	Seeds and dust	Contain some bark, wood, and foreign matter	Mixed	Insoluble deposit 5 to 7 cc. or 87.5% soluble in ethyl alcohol.
8	Unasserted lot			Insoluble or partially soluble, exceeds 7 cc.

Rule 5, thus:

"Guias and/or pertinent papers showing the source of the Philippine Manila Copal; the letter of credit and/or invoice, shall be presented upon demand, to duly assigned Standards Inspectors for their notation."

5. In Rule 12, a new paragraph is inserted between paragraphs 1 and 2, which reads as follows:

"An inspection fee for insoluble and/or partially soluble Philippine Manila Copal, No. 8, shall be charged and collected at the rate of five pesos (₱5.00) per ton or fraction thereof."

6. Rule 13 is hereby modified by adding the following provision:

"In case of rush inspections, as provided in Rule 5, the fee for certificates of inspection and standard which is ordinarily two pesos ₱2.00) only, shall be doubled."

7. All rules and regulations in Commerce Administrative Order o. 7, or any portion thereof, inconsistent with the provisions of this amendment, in form or in intent, are hereby revoked.

8. This Commerce Administrative Order, shall take effect upon its approval.

Done in the City of Manila, this 9th day of September, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

PEDRO C. HERNAEZ
Secretary of Commerce and Industry

Recommended: August 27, 1958.

BONIFACIO A. QUIAOIT
Director of Commerce

Approved: September 19, 1958.

By Authority of the President:

JUAN C. PAJO
Executive Secretary

Central Bank of the Philippines

CIRCULAR No. 92

December 11, 1958

PERIOD DURING WHICH BLOCKED FUNDS OF NON-RESIDENTS MAY BE DEPOSITED IN SPECIAL BLOCKED FIDUCIARY ACCOUNTS WITHOUT LOSING THEIR REMITTABILITY RIGHTS, EXTENTION OF—

The last day on which blocked peso funds of nonresidents, except peso bank accounts of nonresident commercial banks which are funded with U. S. dollars, may be deposited in special blocked fiduciary accounts with commercial banks or government depository, without losing their remittability rights under the provisions of Central Bank Circular No. 90 dated October 22, 1958, is hereby extended from December 12, 1958 to January 16, 1959.

Approved by the Monetary Board:

ANDRES V. CASTILLO
Deputy Governor

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments

December 1958

Hilario Capotulan as Justice of the Peace of Zamboanga del Sur, December 10.

Narciso Albano as Justice of the Peace of Cabagan, Isabela, December 15.

Vicente Rudas as Justice of the Peace of Nahaplag, Leyte, December 15.

Napoleon Victoriano as Justice of the Peace of Despojols, Romblon, December 15.

Norberto Tizon, Jr., as Justice of the Peace of San Isidro, Samar, December 15.

Manuel Leteba as Justice of the Peace of Allen, Samar, December 15.

Marcelino A. Andrada as Auxiliary Justice of the Peace of Sison, Pangasinan, December 15.

David C. Concepcion as Auxiliary Justice of the Peace of Pasig, Rizal, December 15.

Ambrosio Aggabao as Clerk of Court of Isabela (Ilagan Branch), December 15.

Florencio M. Garcia as Part-Time Member of the Board of Governors of the Development Bank of the Philippines, December 17.

Dr. Feliciano San Agustin as Member of the Veterinary Examining Board, December 18.

Designations by the President

December 1958

Protacio Licsi as Acting Member of the Board of Directors of the National Development Company, December 1.

Lucidio P. Climaco as Acting Member of the Board of Examiners for Marine Engineers, December 15.

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT GARCIA'S SPEECH AT THE THIRD ANNUAL AWARD OF THE SUBURBAN PRESS CLUB HELD AT THE NATIONAL PRESS CLUB BUILDING, WEDNESDAY, EVENING, DECEMBER 17, 1958

GENTLEMEN OF THE PRESS:

TWICE within a forthnight have I had the occasion to face an assemblage of the press boys—the first one in Tokyo and the second tonight—and I have been constrained to agree with an observer's remarks that if this goes on for the rest of December, I shall have noticed that this month was not the coldest month but rather the hottest in the year. I have been told that the local press blows hot and cold at intervals—but as I see it, it has been blowing mostly hot. I would add, however, that your spontaneous applause for me tonight warms me to my heart.

My friends, information media serving the rural areas of our country had been taken for granted in the past. Many of the metropolitan dailies more often reach only the chief towns and municipalities of the provinces, and circulates among a limited subscribers therein. The situation is often aggravated by the fact that in some towns and municipalities, newspapers and news magazines are delivered several days past their date of issue. A recent survey made by two researchers underscored the glaring fact that the Philippine rural population was "hungry" for information about the work and plans of the government. The survey further indicated that magazines, newspapers, and other reading material were passed from hand to hand and people often congregated in the houses of the few fortunate ones who owned radios to hear the latest news.

I am glad to note, however, that the suburban and provincial press lately has grown in number and that the total combined circulation of more than 190 daily, weekly, monthly, and quarterly publications in 53 provinces has reached the 850,000 mark. While indeed, this figure may still be below the desired level, indications point to its steady growth. I strongly feel that within five years, more and more of our rural areas will stand to benefit from the projected increase in the number of provincial publications.

My administration, ever desirous of informing our people throughout the length and breadth of the country about the work and actuations of the government, has bolstered the presidential press office with the establishment of a provincial section to serve solely the needs of the provincial press. Today, more news material are being channeled to the rural areas, and as a consequence more of the people in the rural areas are better informed.

The potentialities of the provincial press emphasize the tremendous responsibility that the editors and news reporters of the provincial papers have in their hands. The provincial press is the main artery of information between the outside world and the rural areas. It is a link between the minds of men who inform and those who would be informed of the truth. The printed word could be a physical link, more so than the spoken word. Information through word of mouth can be distorted and so can the printed word. But the difference lies in the latter's permanent character.

Often enough, we hear of rural folks swearing as gospel truth a canard handied about by critics of the Administration who would sow hate and distrust among the people. The adverse effect of such malicious information systematically voiced by the so-called prophets of disaster could only result in confusion and dissension among our people, and therefore, could pave the way for agents and provocateurs of a godless ideology in another attempt to lure away our citizens from their chosen way of life. Once in 1949 these agents nearly succeeded in their diabolical plot to wean them of their side. This should not happen again.

A people, uninformed, are prone to believe anything passed to them as legitimate news. But a well-informed people will readily discern the truth from a bare-faced lie.

Indeed, the provincial press has a grave responsibility in its hands and this calls for the highest integrity in the men who run it—from the publisher down to the reportorial level. By integrity, we mean the strict adherence to what is factual and true and the maintenance of a free and strong press. A news item slanted to serve the interests of one man, or an editorial designed to enhance the ambitions of an interested individual—compensated by political favors or promises of political opportunities are manifestations of servitude. Servitude is not freedom; it is a sign of weakness. When this happens, then the press is no longer free.

We have here in this country one of the freest and strongest press in world today. It is a distinct achievement in the sense that not all the press in the world are free. Those behind the iron curtain, for instance, cannot claim this distinction. There are others within the orbit of the free world but which are not totally as free as ours. Our press has remained free and strong mainly because the men behind it have jealously guarded that sacred principle, and the Administration has respected such a principle. To quote a famous man (Colton): "The press is not only free, it is powerful. That power is ours. It is the proudest that man can ejoy. It was not granted by monarchs; it was not gained for us by aristocracies; but it sprang from the people, and, with an immortal instinct, it has always worked for the people."

The provincial press, serving the greatest area in our country, is the backbone of public opinion. Its collective strength places it in a unique position as educator, informant, and guardian to millions of our people. In recognition of this fact, I invited your representative to join be in my recent state visit to Japan.

My friends of the press: such is the weight of the burden which you must shoulder in your chosen profession. An accurate report can serve not only your interests as reliable pressmen but, what is more important, the welfare of our people. An inaccuracy can have disastrous effects to the country.

These are the basic principles of good journalism as I know it. I am sure that a repetition of these principles can not be complete without this observation that there are always two sides to a story. Any good journalist, true to his profession, knows that to report only one side of a story is not only being unfair to the individual concerned but he is guilty also of one-sided, baised, and prejudiced reporting.

In closing, I wish to assure each and everyone of you that the freedom of the press in our country will be maintained and respected during my administration. This I promise.

PRESIDENT GARCIA'S SPEECH AT THE TRADITIONAL "PRESIDENT'S NIGHT" SPONSORED ANNUALLY BY THE MANILA OVERSEAS PRESS CLUB IN HONOR OF THE PRESIDENT AND THE FIRST LADY AT THE MOPC BUILDING, THURSDAY EVENING, DECEMBER 18, 1958

MY FRIENDS:

I HAVE come to look forward to this annual event for two reasons. First, it affords me an opportunity to meet and chat in a relaxed and informal atmosphere with friends I see otherwise only in their professional news-gathering activities. My second reason derives from a tradition which has grown up in connection with these annual festivities. My predecessors as well as myself have taken advantage of the cosmopolitan and world-minded group which usually assembles here to discuss, report, and clarify administration foreign policy and the general subject of our external affairs. I propose to continue the tradition this evening.

I would hesitate to introduce this note of sobriety into an otherwise gay atmosphere if I were not aware of the fact that the conscientious reporter—sometimes to my chagrin—considers no time or place inappropriate for seeking news. However, I do not intend to let business usurp too much of the time we have set aside tonight for relaxation and the friendly exchange of views.

I have been asked recently if our increased emphasis upon Asian relations—notably my visit to Japan—was indicative of any significant shift in foreign policy. My answer, of course, was in the negative. On the contrary, I pointed out, the forging of closer ties with our free Asian neighbors is a specific of the Administration's foreign policy, a traditional plank of the Nacionalista platform, and in fact one of the policies endorsed by all shades of domestic political opinion. The late President Magsaysay not only stated it as a major element of his political outlook but gave it further expression in his sympathetic encouragement of the now intenationally-lauded Operations Brotherhood which has brought us so much closer to our sister Republic of Vietnam. Unfortunately, however, we have been so preoccupied with our many and vexing domestic problems that we have not been able to do as much as we might have wished to established more such neighborly ties.

Racially and geographically we are an Asian people. If for no other reason we should be making this effort to reach out for closer cooperation, for better understanding, for the cultural exchange which is the very essence of man's constantly broadening spiritual and intellectual horizons. But today there is added reason for us to make this effort, a reason which lends significance and urgency to the task we have assumed.

There is a growing awareness in Asia that the relentless drive of communism for world domination is something that cannot be ignored by any free Asian. Appropriately—or perhaps ironically—the most sobering warning comes from the mainland of Asia itself. There the Chinese Communists proudly announce their communes, a preview of Marxist Utopia as they themselves describe it to a shocked world; it is the most monstrous and gruesome degradation of a people in modern history. The very bedrock of the Asian way of life—the family—has been shattered by decree. In its place has been imposed a fantastic militarized social system in which men and women, husbands and wives, live in separate barracks and eat in segregated mess halls, while their children are raised in state institutions. Marched off to work and marched back again, their every waking hour is under rigid direction and discipline. No feudal despot, no imperialist conqueror has ever dared attempt as complete an enslavement of a people.

to work and marced back again, their every waking hour no imperialist conqueror has even dared attempt an enslavement of a people.

If the impact of this development were only upon our conscience as fellow humans, it would be bad enough. But beyond our compassion for its victims, comes the realization of the purpose of this social nightmare. Where ancient despots employed slave labor to build monuments to their

egos, these slaves of our time are being employed to build a powerful, aggressive, state machine intended to subjugate its neighbors who, indeed, already are wincing under its destructive pressure.

Only recently the Malayan minister of commerce attacked Chinese Communist dumping practices in South Asia as naked use of slave labor for economic warfare. It was pointed out that products were being sold for only a fraction of their cost of manufacture and 300 per cent below the mainland selling price. Soviet dumping of tin below its own purchased price to capture traditional markets has also been protested.

Elsewhere other of our free Asian neighbors are rising to protest veiled economic and political aggressions by the Red Bloc. Indonesia's chief delegate to the Afro-Asian conference has challeged the right of the Soviets to speak for the subjugated Moslems of Central Asia. Thailand found it necessary to expel two Soviet diplomats for espionage and subversion. In Burma new regulations are being applied to check the economic subversion activities of Communist-controlled banks. Japan just recently experienced a Chinese Communist effort to use trade agreements as a weapon to influence internal Japanese politics.

More and more free Asians are coming to realize that the Communist invitation to peaceful coexistence was an empty propaganda gesture. Each day there is mounting evidence in this part of the world that the Communists' pious endorsement of "pancha sila" does not inhibit them from cynically violating these principles any more than they have hesitated to violate the universally accepted cannons of international law.

In Europe a distressed airman who happened to land in Red-controlled territory is shamelessly held hostage for political bargaining. In this hemisphere, even now, we are witnessing the incredibly callous tactic of deadly artillery barrages—with their attendant human suffering—launched on alternate days, not for military conquest, mind you, but merely to advance a propaganda line. However reluctantly, therefore, hitherto hopeful Asians have come to accept the grim fact that the Communists have not relaxed their aggressive pressures, that Moscow and Peking leaders meant it when they vowed continued adherence to Leninism —which means the objective of a totally Communist world by fair means or foul— and that they have merely changed their weapons of warfare.

How this change came about is pertinent to our present Asian policy line. It will be recalled that the SEATO came into being as the free world's response in this area to the challenge of naked military Red aggression against Asian peoples and states. There has been some argument as to the actual strength of the SEATO collective security system. While the Chinese Communist have called it a "paper tiger,"

their ceaseless propaganda efforts to destroy it suggest that it is no small source of concern. Certainly, whatever the fire-power of SEATO may be, its deterrent effectiveness is beyond dispute. The inescapable fact is that Red military aggressions ceased when the SEATO was born, and, in keeping with Leninist doctrine, the Communist shifted to a policy of attraction, cloaking the tactic of deceit prescribed likewise by Lenin as an orthodox element of Red polity.

Thus, the war goes on. Only the weapons—at least temporarily—have changed. How are we to respond to this challenge? Collective purpose, collective actions, and a pooling of resources was effective in the military phase. Why should it not be effective in the current situation? We believe that it can be.

It is difficult to say at this time exactly what form collective Asian defense against Communist economic and political aggression should take. An essential pre-condition of such effort, however, is obvious. Among the members of the free Asian community there must develop a broad and sympathetic understanding of each others' thinking, problems, and national objectives. Only with such understanding can we explore the common ground upon which a common economic, political, and spiritual defense may be based and collective action undertaken. To achieve this understanding for ourselves and to encourage our neighbors to seek it is what motivates the current emphasis of our foreign policy.

In pursuing this path we feel that we are fulfilling our own concept of the role of each member of the free world community in its defense. Having reached the conviction that the Communist drive toward world domination is not a conventional big power struggle from which we can stand aloof, it becomes an obligation involving national self-respect not to leave the waging of the battle to others. Our sovereign dignity demands that we make every contribution within our competence to the arsenal of freedom. This is a contribution we can make and one which, modest though it may be, could mark a turning point in the adverse tide.

We approach our self-imposed task with humility, seeking no role of leadership, offering only the wholesome Filipino concept of the *barangay*. If we can thereby serve as catalysts of free Asian unity and cooperation for the preservation of our hard won freedoms, our share of the victory will be more than ample justification.

But there are other facets, other by-products, to this calculated expansion of our foreign relations. If I have stressed its security aspects, its relations to the massive global contest for man's freedom, it is because survival, after all, must be the prime concern of the nations as well as individuals. The individual may survive, after a fashion,

as a slave, but the vital organs of a nation are its institutions and the nation ceases to exist once those institutions are destroyed.

In our concern for security from external destruction, therefore, we have not ignored the *domestic* requirements for survival—economic expansion and development to meet the expanding needs and expanding expectations of an expanding population. A characteristic of the modern world is the growing interdependence of all its parts. We have seen the enemy's application of a total war strategy in which the assault takes place on all fronts of human activity—military, economic, political, and even spiritual. Our response to the challenge must be comparably total. In brief, every element of our domestic society must be strengthened, every member of the free world community must be strengthened, if the community as a whole is to prevail over its foes.

New channels of trade and commerce, the exchange of ideas, the absorption of new experience—all these nutrients of national growth are part of our Asian quest. Confident of the stability and durability of our traditional foreign relationships, we are now prepared to broaden our horizons, to explore *additional* areas of friendship and cooperation. If this is to be called a shift of policy, it must not be misconstrued as a shift of indecision. On the contrary, it should be recognized as a shift to a higher plane of national maturity and national self-confidence.

PRESIDENT GARCIA'S CHRISTMAS MESSAGE, DECEMBER 24, 1958

THE perpetuity of Christmas and what it stands for never have been more implicit in Mankind's unceasing search for world peace and universal brotherhood. While all Christendom pauses from its daily toil to celebrate the Feast of His Nativity, we must not lose sight of the spiritual significance of the occasion and the message that it brings to all men of all nations: Peace on earth and goodwill among men.

I wish to give thanks to Our Lord for having guided us through the year. While we have been beset by problems, principally on the economic field, we have nevertheless been fortunate in other fields of endeavor. We have, in particular, been blessed with a bumper crop of rice and corn which this country never experienced before. We have been endowed with abundance and wealth in natural resources. Compared with many countries of the world, we have indeed every reason to be grateful.

On this day when charity and noble thoughts should be the prevailing sentiment, I enjoin the entire nation to give thanks to Christ, the Prince of Peace, for the blessings we have received, and at the same time to lift our hearts and minds in fervent prayer that the message of Christmas reach into the hearts of all men.

DECISIONS OF THE SUPREME COURT

[No. L-9549. December 21, 1957]

MANILA TOBACCO ASSOCIATION, INC., plaintiff and appellant, *vs.* THE CITY OF MANILA, and M. SARMIENTO, in his capacity as City Treasurer of the City of Manila, defendants and appellees.

1. MUNICIPAL TAXES; DEALERS IN GENERAL MERCHANDISE; CIGARS AND CIGARETTES INCLUDED IN TERM "GENERAL MERCHANDISE".—The term "general merchandise" includes all articles usually bought and sold in trade (40 Corpus Juris p. 641–642) either wholesale or retail (Bouvier's Law Dictionary Vol. II–2195.) Cigars and cigarettes are unquestionably of that kind; therefore dealers in cigars and cigarettes are dealers in general merchandise, subject to tax under the Charter of the City of Manila.

2. MANUFACTURER; WHEN CONSIDERED A DEALER.—A manufacturer becomes a dealer if he carries on the business of selling his goods or his products at a store or warehouse apart from his own shop or manufactory.

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, *J.*

The facts are stated in the opinion of the Court.

Rodegelio M. Jalandoni and *Guillermo B. Blanco* for the plaintiff and appellant.

City Fiscal Eugenio Angeles and *Assistant Fiscal Arsenio Nañawa* for the defendants and appellees.

BENGZON, *J.:*

Assailing the validity of Ordinance No. 3634 of the City of Manila and the Regulations complementary thereto, the plaintiff association composed of manufacturers of or dealers in cigars, cigarettes and other tobacco products filed this action for declaratory relief in the Manila Court of First Instance, asking for their annulment in so far as they affected its business activities.

The defendants opposed the request, asserted the City's power to tax and pleaded for dismissal of the complaint.

The Hon. Rafael Amparo, Judge, after hearing the parties dismissed the case. Wherefore this appeal perfected in due time.

The ordinance in question imposes a municipal tax on those "engaging in the business as wholesale dealer in general merchandise," and provides that "the term 'general merchandise' shall include all articles subject to the payment of percentage taxes, graduated fixed taxes and specific taxes. It shall also include poultry and livestock, fish and other allied products."

This ordinance amended Ordinance No. 3420 imposing the same tax, but expressly excluding from the definition of "general merchandise" all articles *subject to the payment of specific taxes* under the Internal Revenue Code. Inasmuch as cigars and cigarettes are subject to specific taxes, the amended ordinance necessarily touched the pockets of cigar dealers and merchants. Hence this suit, resting on the proposition that although the City of Manila has, by its Charter (Republic Act 409, Sec. 18, par. O) power to tax dealers in general merchandise the term "general merchandise" does not include dealer in articles —like cigars—*subject to specific taxes.*

The text of such legislative authority reads as follows:

"(o) To tax and fix the license fee on dealers in general merchandise, including importers and indentors, except those dealers who may be expressly subject to the payment of some other municipal tax under the provisions of this section."

"Dealers in general merchandise shall be classified as (a) wholesale dealers and (b) classified into four main classes: * * * * *."

"For purposes of this section, the term 'General merchandise' shall include poultry and livestock, agricultural products, fish and other allied products."

Inviting particular attention to the last paragraph, the plaintiff association presents an argument which, in short, amounts to this: Except for this paragraph the word "general merchandise" would not have included poultry and livestock, etc.; the latter would not have been included, because they were exempt from the payment of taxes ordinarily paid by merchants (like percentage taxes) by virtue of sec. 188 of the National Revenue Code; therefore other articles exempt under sec. 188—like cigars—are not included within the scope of the word "general merchandise."

The reasoning although clever, can not stand a separate examination of its component propositions. The first can not fully be accepted; poultry is "merchandise or personal property or whatever character." The Legislature might have made express reference to poultry and livestock out of extreme caution[1], in a needless effort to make comprehensive the scope of the term.

However, admitting the validity of such proposition, we find no indication that poultry and livestock would have been excluded from the term simply because of section 188. Appellant quotes no authority to support such second proposition. The reason for their express mention lay in their very nature, the possibility that, as living or growing objects, they might not be regarded as merchandise.

And other articles subject to specific taxes—like cigars, matches and firecrackers—were not expressly included be-

[1] See generally 82 Corpus Juris Secundum p. 670.

cause there was no such possibility. If the Legislature had intended not to include articles subject to specific taxes in the power to tax granted to the City of Manila, it would have said so clearly, as it did in Commonwealth Act No. 472 when it ordered, the municipal councils shall have no power to impose "specific taxes," nor taxes "on the business of * * * tobacco dealers etc." (Secs. 1 and 3)

Petitioner asks, why should cities like Manila be permitted to tax goods that other municipalities cannot tax? The answer is easy to find: The need for greater revenue, in view of the City's expanded services and activities.

The other argument of appellant runs along this line: "Dealers in general merchandise" are, ordinarily, merchants; merchants under the Internal Revenue Code pay fixed and percentage taxes; consequently "general merchandise" should mean articles subject to fixed and percentage taxes—not those subject to specific taxes. This process of reasoning does not sound convincing[2]; in fact, it is inconclusive, for it does not assert as a premise—it cannot assert—that merchants *do not pay* specific taxes. Logically, from the two premises above stated the inference should be: dealers in general merchandise pay fixed and percentage taxes.

Furthermore, appellant itself admits to a difference between "dealers" and "merchant" in the light of internal revenue laws; and the City Charter speaks of "dealers."

As a result we perceive no valid reason to bestow on the term "general merchandise," any other meaning than the ordinary one, which includes all articles usually bought and sold in trade (40 Corpus Juris p. 641–642) either wholesale or retail (Bouvier's Law Dictionary Vol. II–2195.) Cigars and cigarettes are unquestionably of that kind; therefore dealers in cigars and cigarettes are dealers in general merchandise, subject to tax under the City Charter and the Ordinance.

A second point remains to be considered. Implementing the Ordinance in question the City Treasurer issued Regulations which provide, among other things, that "wholesale dealers" shall include "manufacturers in Manila who conduct the business of selling their own products at wholesale at places in the City other than their factories" * * *.

This is erroneous, suggests the association, because "manufacturers" are not "dealers," "manufacturers of cigars" differ from "wholesale tobacco dealers"; and the Charter authorized no tax on manufacturers. It relies on Central Azucarera Don Pedro *v.* City of Manila[3]

[2] One might as well argue: Merchants pay real estate taxes; consequently "general merchandise" means real estate.

[3] G. R. No. L–7679. September 25, 1955.

wherein this Court held that the mere fact that a manufacturer sells the sugar that it manufactures does not thereby make it a dealer in sugar." Precisely, that case also holds that such manufacturer becomes a dealer if he carries on the business of selling his goods or his products at a store or warehouse apart from his own shop or manufactory.

The order of dismissal is therefore affirmed with costs against appellant.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Order of dismissal affirmed.

[No. L-9007. 29 May 1957]

GREGORIO FURIA, petitioner, *vs.* COURT OF APPEALS, respondent

CRIMINAL LAW; ESTAFA; EVIDENCE; WHERE INFORMATION CHARGES CONSPIRACY, THE EVIDENCE TO PROVE CONSPIRACY MAY NOT BE OBJECTED TO.—The evidence for the prosecution showed that it was S. M., an employee of the Bureau of Posts, and S. A. who signed the check to identify the signature of the payee upon the petitioner's assurance that the fictitious woman was the payee and that the signature written on the check was hers. Although said evidence is at variance with the fact alleged in the information that the petitioner together with S. M. signed on the back of the check to identify the signature of the fictitious payee, yet as the information charges conspiracy between the defendants to commit the crime, the evidence for the prosecution to show and prove such conspiracy could not be objected to and the overruling of the objection is not a reversible error. Had it not been for the introduction by the petitioner of the fictitious woman to his office mate S. A. who was assured by the petitioner that the fictitious woman was the payee of the check, neither S. A. nor S. M. would have signed on the back of the check to identify the signature of the fictitious woman as payee. The identification of the latter and her signature made possible the cashing of the check and the misappropriation of the amount by the petitioner and the fictitious woman other than the real payee. The crime committed is the complex crime of *estafa* by means of falsification of an official and commercial document defined and penalized in article 315 and 172 of the Revised Penal Code.

REVIEW by certiorari of a decision of the Court of Appeals.

The facts are stated in the opinion of the Court.

José V. Rosales for petitioner and appellant.

Assistant Solicitor General Jaime de los Angeles and *Solicitor Lauro C. Maiquez* for the respondent and appellee.

PADILLA, *J.:*

This is an appeal by certiorari under Rule 46 to review a judgment of the Court of Appeals.

The petitioner was charged in the Court of First Instance of Manila with *estafa* through falsification of a public, official and commercial document in an information filed by the Office of the City Fiscal (criminal case No. 19102). After trial the Court found him guilty of the crime defined and punished under article 166, in connection with article 315, of the Revised Penal Code, and sentenced—

* * * him to suffer an indeterminate penalty of from SIX (6) YEARS of *prisión correccional* to EIGHT (8) YEARS and FOUR MONTHS of *prisión mayor*, to pay a fine of ₱2,000, to indemnify the offended party in the amount of ₱384.96, without further subsidiary imprisonment in case of insolvency, and to pay one-fourth of the costs. (Annex A.)

On appeal, the Court of Appeals convicted him of *estafa* through falsification of an official and commercial document, as penalized in article 315, paragraph 3, subsection 2, in connection with articles 172 and 48, as amended, of the Revised Penal Code, and sentenced him to suffer.—

* * * from two (2) years and four (4) months to five (5) years, two (2) months and eight (8) days of *prisión correccional*, to pay a fine in the sum of ₱2,000, to indemnify the offended party in the amount of ₱384.96, or to suffer the corresponding subsidiary imprisonment in case of insolvency of both fine and indemnity, to the accessories of the law and to pay in the first instance ¼ of the costs. (Annex B.)

The petitioner contends that the Court of Appeals committed the following errors:

1. The respondent erred in ignoring entirely the first error assigned by the appellant in his brief to the effect that the trial court erred in allowing the prosecution to present evidence in (at) variance with the allegations in the information over the objection of the defense;
2. The respondent erred in declaring that the amount of the check in question was paid to the supposed payee;
3. The respondent erred in holding the appellant criminally and civilly liable for an alleged misrepresentation to the witnesses, Severino Aznar and Simeón Monzón;
4. The respondent erred in finding the appellant guilty as charged;
5. The respondent erred in not imposing the minimum of the minimum of the indeterminate penalty; and
6. The respondent erred in not granting the motion for reconsideration filed by the appellant.

The information filed against the petitioner and his codefendants is as follows:

That on or about the 20th of June, 1949, in the city of Manila, Philippines, the said accused, conspiring and confederating together and helping each other, did then and there wilfully, unlawfully and feloniously defraud one Inés B. Bentoso and/or the Bureau of Posts, a government entity under the Department of Public Works and Communications of the Republic of the Philippines in the following manner, to wit: the said accused Severino Aznar and Juana Doe, the latter with identity and whereabouts still unknown, having somehow obtained or come into possession of a United States Depository check No. 917,109 dated May 11, 1949 in the amount of ₱384.96 payable to said Inés B. Bentoso, which is a public, official and commercial document in that the same is a written act of the sovereign authority of the United States, a foreign country and recognized as a negotiable instrument by the Mercantile Law, did then and there willfully, unlawfully and feloniously write, print, imitate and forge or cause to be written, printed, imitated and forged the signature of said Inés B. Bentoso at the back of said check and the said accused Gregorio Furia and Simeón Monzón, the latter an employee in the Manila Post Office who taking advantage of his position thereat he being known to his co-employees in said office who in one way or another has something to do with the cashing of said check, signed their signatures at the back of said check as identifiers thereof, thus causing it to appear that the said Inés B. Bentoso duly signed said U. S. Depository check No. 917,109 and that she (Inés B. Bentoso) took part in the transaction, although they knew she did not, thereby making untruthful statements in the narration of facts; that as soon as said U. S. Depository check

No. 917,109 had been falsified in the manner just described, the said accused, with intent to profit thereby and in furtherance of their conspiracy introduced the said accused Juana Doe as the real Inés B. Bentoso to the teller of the Postal Savings Bank who wanted her check to be cashed, as in fact the said check was cashed for the amount of ₱384.96, they (all of them) knowing fully well that the said check had not been signed by the payee thereof, Inés B. Bentoso, neither has she authorized anyone of them to act for her, and it is only a forgery; and the said accused, once in possession of said cash amount of ₱384.96, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to their own personal use and benefit, to the damage and prejudice of said Inés B. Bentoso and/or the Bureau of Posts in the aforementioned sum of ₱384.96, Philippine currency. (See Annex A.)

Both the trial and appellate courts found that—

Sometime on June 21, 1949, Gregorio Furia, an employee of the Investigation Section of the Manila Health Department, City Hall, Manila, approached his co-employee Severino Aznar and introduced him to a woman whom he referred to as Inés Bentoso, allegedly a townmate of his. Furia also told Aznar that this woman was the payee of check No. 917107 (Exhs. A & A–1) and that he wanted him (Aznar) to help said woman in cashing said check. Knowing somebody in the Bureau of Posts, Aznar accompanied Furia and the alleged Inés Bentoso to that bureau and there he sought Simeón Monzón, an employee of the Bureau of Posts, and introduced Furia as his office mate and the woman who went with them as Inés Bentoso, the payee of the check. In order to convince Aznar and Monzón of the true identity of Inés Bentoso, they presented a residence certificate wherein the name "Inés Bentoso," of Agusan province, appeared. Forthwith Monzón asked Aznar to sign the back of the check and afterwards he himself signed it also and then accompanied the group to the window of the paying teller. There the full amount of the check, ₱384.96, was paid to the woman (Exhs. A & A–1).

It also appears that Inés B. Bentoso, 38 years of age, widow, teacher and a resident of Mambalili, Agusan, was a war damage claimant with card No. 100386 of the U.S.–Phil. War Damage Commission and that the check in question was intended by said Commission to satisfy her claim (Exh. B). However, she did not receive the check and neither did she affix her signature thereon or authorized anyone to do so for her, and she is positive that she does not know Severino Aznar nor Simeón Monzón.

Because of these facts Severino Aznar, Gregorio Furia, Simeón Monzón and Juana Doe were accused of *estafa* through falsification of a public and commercial document before the Court of First Instance of Manila, but upon motion of the Fiscal, Severino Aznar and Simeón Monzón were discharged from the information to be utilized as witnesses for the State. And as Juana Doe was never arrested nor identified, the case proceeded only as against Gregorio Furia who, after proper proceedings, was found guilty of the crime charged in the information and sentenced to suffer the indeterminate penalty of from 6 years of *prisión correccional* to 8 years and 4 months of *prisión mayor*, to pay a fine of ₱2,000, to indemnify the offended party in the amount of ₱384.96, without subsidiary imprisonment in case of insolvency, and to pay ¼ of the costs.

Not satisfied with this decision Gregorio Furia brought the matter up to Us on appeal and in this instance his counsel assigns numerous errors as committed by the trial court, all of which having to do

either with the appreciation of the evidence against appellant or in finding him guilty and sentencing him to the penalty aforementioned instead of acquitting him at least on reasonable doubt.

There is no dispute that the check for ₱384.96 (Exhs. A & A-1) was intended for Mrs. Inés B. Bentoso in payment of her aforementioned war damage claim, and there is no question either that she has not signed, nor authorized anybody to sign said check and collect for her the amount represented therein, nor in any way intervened in the cashing of said check. The only facts subject of controversy are appellant's denial of having accompanied the woman posing herself as Inés Bentoso to the Manila Post Office in cashing the check, and of having assured Severino Aznar and Simeón Monzón that the woman with him, whose signature appears at the back of check No. 917107, was Inés Bentoso. He contends that on June 20, 1949, a townmate of his, by the name of Venancio Sianteng, approached him in his office together with a woman who was introduced to him as Inés Bentoso; that Sianteng requested him to help them so that his woman companion would cash her check; that he, in turn, accompanied them to Severino Aznar, an office mate of appellant, and asked the former to extend to Sianteng and the woman a helping hand; that Aznar promised him that he would try his best, after which the trio left for the Bureau of Posts.

After due consideration of the evidence produced, We find that the version of the case, as narrated by appellant, is utterly untenable. It appears on record that before contacting Aznar appellant had already accompanied the supposed payee to the Bureau of Posts but was not able to cash the check in question because he did not know anybody in said office, and appellant's bare statement cannot prevail over the testimony of Simeón Monzón and Severino Aznar who declared that appellant was present in the Bureau of Posts when the check in question was cashed. If appellant's contention about the intervention of Sianteng were true, it would be strange that he would not have presented this man as a witness in his behalf, or made him to be called by the authorities, and We entertain no doubt that appellant was the mastermind who engineered the whole scheme to defraud either Inés B. Bentoso or the Government. Consequently, We cannot declare that the lower court committed any error in finding appellant guilty of the crime he is charged with in the information.

True, contrary to what is alleged in the information, the trial and the appellate courts found that the petitioner did not sign on the back of the check in question to identify the signature of the fictitious woman as payee, but that he approached his co-employee Severino Aznar, introduced to him the fictitious woman as the payee of the check, and enlisted Aznar's help to cash the check, who introduced her to Simeón Monzón, an employee of the Bureau of Posts, who in turn accompanied her to the window of the paying teller. It was Monzón and Aznar who signed the check to identify the signature of the payee upon the petitioner's assurance that the fictitious woman was the payee and that the signature written on the check was hers. Nevertheless, although the evidence for the prosecution is at variance with the fact alleged in the information that the petitioner together with Simeón Monzon signed on the back of the check to identify the signature of the fictitious

payee, yet as the information charges conspiracy between the defendants to commit the crime, the evidence for the prosecution to show and prove such conspiracy could not be objected to and the overruling of the objection is not a reversible error. Had it not been for the introduction by the petitioner of the fictitious woman to his office mate Severino Aznar who was assured by the petitioner that the fictitious woman was Inés B. Bentoso and the payee of the check, neither Aznar nor Monzón would have signed on the back of the check to identify the signature of the fictitious woman as payee. The identification of the latter and of her signature made possible the cashing of the check and the misappropriation of the amount by the petitioner and the fictitious woman other than the real payee.

The crime committed is the complex crime of *estafa* by means of falsification of an official and commercial document defined and penalized in articles 315 and 172 of the Revised Penal Code. The penalty provided for the more serious crime is *prisión correccional* in its medium and maximum periods which must be imposed in its maximum period pursuant to article 48 of the Revised Penal Code, as amended, or from 4 years, 9 months and 11 days to 6 years of *prisión correccional;* and applying the Indeterminate Sentence Law the petitioner is sentenced to suffer a minimum of 4 months and 1 day of *arresto mayor* and a maximum of 6 years of *prisión correccional.* Modified as to penalty only the rest of the judgment appealed from is affirmed, with costs against the petitioner.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Decision affirmed with modification.

[No. L-9327. March 30, 1957]

KAPISANAN NG MGA MANGAGAWA SA MANILA RAILROAD COMPANY, VICENTE K. OLAZO, ETC., ET AL., petitioners *vs.* PAULINO BUGAY and the COURT OF INDUSTRIAL RELATIONS, respondents.

1. LABOR; LABOR ORGANIZATIONS; RIGHTS AND CONDITIONS OF MEMBERSHIP IN LABOR ORGANIZATIONS.—Under Republic Act No. 875, the Court of Industrial Relations has jurisdiction over cases involving rights and conditions of membership in the labor organization, such as, an alleged illegal expulsion of a member from a labor organization. Although ordinarily, Section 17 of Republic Act No. 875 requires a minimum of ten per cent of the members of a labor organization to be able to report a violation of labor organization procedures, nevertheless, when such violation directly involves and affects only one or two members, such as, illegal expulsion, then only one or two members would be enough to report such violation and seek redress in the Court of Industrial Relations.
2. ID.; LOYALTY OF A LABORER TO HIS LABOR UNION AND TO HIS EMPLOYER.—A laborer owes loyalty to his labor union; he also owes loyalty to his employer. In other words, he has a divided loyalty. He cannot, due to his loyalty to his labor union, act adversely to the interest of his employer or vice-versa.
3. ID.; MEMBERS OF LABOR UNIONS.—A member of a labor union may be expelled only for a valid cause and by following the procedure outlined by the constitution and by-laws of said union.
4. COURT OF INDUSTRIAL RELATIONS; PLEADING AND PRACTICE; PERIOD WITHIN WHICH TO FILE MOTION FOR RECONSIDERATION.—The rules of the Court of Industrial Relations provide that motions for reconsideration of the Court's decision should be submitted within five days from the date of notice; that the motion shall be submitted with arguments supporting the same and that if the arguments cannot be submitted simultaneously with the motion, upon notice to the court the movant shall file the same within ten days from the date of the filing of his notice for reconsideration.
5. ID.; ID.; FAILURE TO OBSERVE THE PERIOD; DISMISSAL OF MOTIONS FOR RECONSIDERATION.—Failure to observe the period provided by said rules relative to the filing of motions for reconsideration and arguments in support thereof shall be sufficient cause for dismissal of the motion for reconsideration.

REVIEW by certiorari of a decision of the Court of Industrial Relations.

The facts are stated in the opinion of the Court.

Sisenando Villaluz for petitioners.
Gregorio E. Fajardo for respondent Paulino Bugay.
Simeón S. Andrés for the respondent CIR.

MONTEMAYOR, *J.:*

This is a petition for review of the decision of the Court of Industrial Relations (CIR) in Case No. 129-ULP, dated January 27, 1954 (1955), and the resolution of the same court dated June 10, 1955, dismissing the motion for reconsideration. The petition, filed by the petitioner Ka-

pisanan ng mga Manggagawa sa Manila Railroad Company, a labor union duly registered, Vicente K. Olazo, its president, and twenty other composing the Board of Directors, ask that the decision and the resolution aforementioned be revoked and set aside, and that the complaint for unfair labor practice against petitioners herein be dismissed.

Respondent Paulino Bugay, employed by the Manila Railroad Company as a payroll clark and at the same time a member and an official of the Kapisanan, being its union auditor, filed charges with the CIR against said Kapisanan, its president (Olazo), and the members of the Board of Directors, complaining that he had been illegally expelled from the Union. On the basis of said charges, an acting prosecutor of the CIR filed a complaint against the Union, its president, and the members of the Board of Directors (Case No. 129-ULP), charging them with unfair labor practice within the meaning of Section 4 (b) (2) of Republic Act No. 875. Defendants answered the complaint denying the charges and alleging that Bugay, as a member of the Union, had been charged with disloyalty and infidelity in the custody of documents of the Union, and conduct unbecoming a member, was duly investigated, found guilty and was subsequently expelled in accordance with the constitution and by-laws of the Union. Hearing was held before a duly designated hearing examiner of the CIR, and thereafter, the CIR decision now sought to be reviewed was rendered. Inasmuch as said decision makes a clear narration of the facts and the issue involved, we reproduce with approval the pertinent portions thereof:

"It appears that complainant Paulino Bugay, payroll clerk of the Manila Railroad Company, became a member of the Kapisanan in 1947. Since then until August 10, 1953, he held the position of union auditor. Sometime in March, 1953, he was requested by the acting secretary-treasurer of the board of directors of the company to lend to the board certain documents belonging to the Kapisanan for "verification purposes" (Exh. D). In compliance with the request, Bugay delivered a certain voucher to the management without consulting the other officers of the union. In or about the same month, respondent Vicente K. Olazo, Kapisanan general president and assistant electrical and signal superintendent of the engineering department of the company, was administratively charged by his employer with having exploited retirees of the company. On April 16, 1953, pending investigation of the administrative case, he was suspended from the service of the company. The committee, which was created by the board and which investigated the administrative charge, found him guilty of dishonesty and disloyalty to the company and recommended his dismissal from employment with prejudice to future reinstatement. On May 15, 1953, the board approved the recommendation and on the same date he was discharged. Subsequently, on the company's initiative, he was accused of having falsified its records but the accusation did not prosper. in the preliminary investigation conducted by the office of the City Fiscal of Manila, however, he learned that among the papers used by his employer as evidence against him was the voucher which Bugay had

lent to the company. On June 3, 1953, he complained to the investigation committee of the Kapisanan against Bugay's actuation. This committee set Olazo's complaint for hearing and notified the parties thereto but, for reasons undisclosed by the record, Bugay failed to attend it. Nevertheless, the committee proceeded with the inquiry ex-parte and on June 11, 1953, submitted a report to the Kapisanan board of directors, finding Bugay guilty of disloyalty to the union and recommending his immediate expulsion. In his absence, the Kapisanan board passed a resolution on June 14, 1953, approving the recommendation and transmitted it (Exhibit 4) three days later to the various chapters of the Kapisanan for affirmation or rejection. Majority of the chapters affirmed the resolution. On August 10, 1953, Bugay was notified of his definite expulsion from the union. On the same day, he wrote to the Kapisanan board, questioning the validity of its action. This was followed by the Central Office Chapter to which he belonged and which was one of the chapters that voted against the resolution. The request for reconsideration was granted and the action of the Kapisanan board was transmitted to the different chapters for their consideration. Since January 19, 1954, when the transmittal was made, none of the chapters has ever acted upon he resolution approving Bugay's reinstatement. It is for this reason that Bugay instituted this case against the respondents."

* * * * * * *

"It is to be noted that both the investigation held by the investigation committee of the Kapisanan and in the board meeting of June 14, 1953, where the committee's report recommending expulsion was approved, Bugay was not present. As has been pointed out earlier, the reason for Bugay's failure to attend the investigation does not appear of record. On the other hand, during the board meeting, the committee of three board members assigned to summon Bugay failed to serve notice upon him because he was then in Lucena, Quezon. Why all these proceedings were continued by the respondents in spite of Bugay's absence remains unexplained in the record. But one thing is certain: Whatever might be the merits of the charge filed by respondent Olazo against him, Bugay did not have sufficient opportunity to defend himself. Such proceedings, being violative of the elementary rule of justice and fair play, cannot give validity to any act done pursuant thereto.

"Besides, the contention that majority of the chapters voted in favor of Bugay's expulsion is not borne by the evidence. An examination of the communications sent by the chapters to the Kapisanan board of directors (Exhs. 7 to 28) shows that all of the votes, except those of the Hondagua Chapters and Engineering Manila Yard Chapter (Exhs. 14 & 17) were not validly cast. Under the Kapisanan's constitution and by-laws, relied upon by the parties, before a resolution of general application may be inforced, a resolution terminating union membership is one, it must receive the sanction of majority of the chapters within ten (10) days (Sec. 4, Art. VII, Kapisanan's Saligang Batas). In other words, action thereon, whether favorable or otherwise, must be taken by the chapters within a period of ten days from the time they receive the resolution. According to respondent Olazo's testimony, the resolution passed on June 14, 1953, was transmitted to the chapters on June 17, 1953. To make it effective, the resolution had to be affirmed by the chapters on July 1, 1953, at the latest. The additional time of four days is allowed for transmittals made by mail. Only the two above-named chapters, however, acted on the resolution within the prescribed period. For this reason, even under the assumption that

the proceedings against Bugay were not irregular, the resolution in question never had any valid effect on his union membership. In short, his affiliation with the Kapisanan was never terminated. That being the case, Bugay is entitled to all the rights and obligations appertaining to every member of the Kapisanan. Considering that he has been unduly and discriminatorily deprived of such rights and obligations, the Court finds, and so holds, that the respondents, by their act and conduct, have engaged in and are engaging in unfair labor practice in violation of Section 4(b)(2) of the Act.

"In view of this finding, it is unnecessary for us to pass upon the issue respecting the merits of the union charge against him.

"WHEREFORE, the respondents, their successors and representatives, are hereby ordered to cease and desist from depriving Paulino Bugay of his membership in the Kapisanan Ng Mga Mangagawa sa Manila Railroad Company and to allow him to exercise such rights and perform such obligations as are enjoyed by and imposed upon the other members of the union, free from every form of discrimination. The respondents, their successors and representatives are further hereby ordered to file with with the Court, within ten (10) days from the date of receipt hereof, a certification of their compliance with this decision."

Petitioners question the jurisdiction of the CIR in the present case. We have authorities to the effect that when a member is illegally expelled from his Union, or the processes provided for by the constitution and by-laws of said union have not been followed in effecting the expulsion, said member may resort to the courts for protection:

"Sec. 68. *Generally.*—A union may not expel members except as authorized by its by-laws. A union may discipline a member for refusal to obey its lawful regulations by expelling him and depriving him of its privileges. * * *."

"Sec. 69. *Relief in Court.*—The courts will not review the expulsion of a member of a labor union for infringement of its rules, ordered in accordance with the constitution. Nor will they interfere to protect a member from expulsion because of his refusal to pay a fine, in the absence of any showing of a want of jurisdiction in the Board assessing the fine or a case of irreparable injustice and hardship. But a member of a labor union *who has been illegally expelled may be reinstated by the courts*, either by mandamus proceedings or by an action for an injunction and a judgment of reinstatement, according to the practice in the particular state. In a proper case, an injunction against a threatened unlawful expulsion will be granted." (31 Am. Jur. pp. 864–865) (Underlining ours)

The question to decide is, what is the court or what are the courts referred to in the above quotation. Under section 17 of Republic Act 875, questions involving the rights and conditions of membership in a labor organization, (and the expulsion of a member from such labor organization is one of such questions) fall within the jurisdiction of the CIR. For purposes of ready reference, we are reproducing the whole section 17, viz:

"SEC. 17. *Rights and Conditions of membership in Labor Organizations.*—It is hereby declared to be the public policy of the Philippines to encourage the following internal labor organization procedures. A minimum of ten per cent of the members of a labor organization

may report an alleged violation of these procedures in their labor organization to the Court. If the Court finds, upon investigation, evidence to substantiate the alleged violation and that efforts to correct the alleged violation through the procedures provided by the labor organization's constitution or by-laws have been exhausted, the Court shall dispose of the complaint as in "unfair labor practice" cases.

(*a*) Arbitrary or excessive initiation fees shall not be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fines and forfeitures be imposed.

(*b*) The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided in the constitution and by-laws of the organization.

(*c*) They shall also have the right to elect officers by secret ballot at intervals of not more than two years and to determine and vote upon the question of striking or not striking or upon any other question of major policy affecting the entire membership of the organization.

(*d*) No labor organization shall knowingly admit as member or continue in membership therein any individual who belongs to any subversive organization or who is engaged directly or indirectly in any subversive activity or movement.

(*e*) No person who has been convicted of a crime involving moral turpitude shall be eligible for election to any office in a legitimate labor organization or for appointment to any position involving the collection, custody, management, control, or disbursement of its funds, and any such person shall be disqualified from continuing to hold any office or such position in the organization.

Within sixty days of the election of the officers of a legitimate labor organization, the secretary or other responsible officer thereof shall furnish the Secretary of Labor with a list of the newly-elected officers and the appointive officers or agents of the organization who are entrusted with the collection, custody, management, control or disbursement of its funds. Any change in such list shall be reported within this period.

(*f*) No officer, agent or member of a legitimate labor organization shall collect any fees, dues, or other contributions in behalf of the organization or make any disbursement of its money or funds unless he is provided with the necessary authority pusuant to its constitution or by-laws.

(*g*) Every payment of fees, dues, or other contributions by a member shall be evidenced by a receipt signed by the officer or agent making the collection and entered upon the record of the organization to be kept and maintained for that purpose.

(*h*) The funds of the organization shall not be applied for any purpose or object other than those expressly stated in its constitution or by-laws or those expressly authorized by a resolution of the majority of the members.

(*i*) Every expenditure of the funds of the organization shall be evidenced by a receipt from the person to whom the payment was made, which shall state the date, place and purpose of such payment. Such receipts shall form part of the financial records of the organization.

(*j*) The officers of a legitimate labor organization shall not be paid any other compensation, in addition to the salaries and expenses for their positions which shall be specifically provided for in its constitution or by-laws, except in pursuance of a resolution approved in a meeting by a majority vote.

(*k*) The treasurer of a legitimate labor organization and every officer thereof who is responsible for the accounts of such organiza-

tion or for the collection, disbursement, custody or control of the funds, moneys and other properties of the organization, shall render to the organization and to its members at the times specified hereunder a true and correct account of all moneys received and paid by him since he assumed office or since the last date on which he rendered such account and of the balance remaining in his hands at the time of rendering such account, and of all bonds, securities, and other properties of the organization entrusted to his custody or under his control. The rendering of such account shall be made—

(1) at least once a year within thirty days of the close of its fiscal year;

(2) at such other times as may be required by a resolution of the majority of the members of the organization; and

(3) upon vacating his office.

The account shall be verified by affidavit and copy thereof shall be furnished the Secretary of Labor. The organization shall cause such account to be audited by a qualified person.

(1) The books of accounts and other records of the financial activities of a legitimate labor organization shall be open to inspection by any officer or member thereof."

Of course, the first paragraph of section 17 provides that a minimum of ten per cent (10%) of the members of a labor organization may report to the CIR an alleged violation of these procedures in the labor organization. But there is reason to believe that said minimum of 10% refers only to violations which involve a group or a sizeable number of the members in which the latter are interested, or which necessarily affect them; such as paragraph (*b*) about detailed reports from the officers of the Union of all financial transactions; or paragraph (*c*) about the right to elect officers at intervals of not more than two years and to determine and vote upon questions involving major policies affecting the entire membership of the organization; or paragraph (*h*) about the application of the funds of the organization only for those purposes expressly stated in the constitution or by-laws, etc. However, when a violation like the supposed illegal expuslion of a member affects only the member so expelled, or under paragraph (*a*) an excessive fine is imposed only upon one member; or under paragraph (*c*) one member is deprived of his right to vote by secret ballot in the election of officers of the union; or under paragraphs (*f*) and (*g*) an officer collects from a member any fees or dues or contributions without authority pursuant to the constitution and by-laws, or refuses to issue a receipt to a member from whom any fees, dues or other contributions are colected, etc., then it is not necessary hat 10% of such members of the union make the reports or complaint to the CIR, but only the member immediately affected may do so.

The petitioners in their very petition for review now before us admit this jurisdiction of the CIR. On page 19 thereof, petitioners say the following:

"* * *. The Court is invested with jurisdiction by Republic Act 875 over unfair labor practices only, and over internal union matters in which the union fails to conform to the provisions of its constitution in expelling or suspending a member, or fails to guarantee a fair trial or if remedies provided by the union are vain, or the union action is against public policy."

Petitioners contend that the act of respondent Paulino Bugay as audior of the Union in removing from the files of said Union a certain document and lending it to the Manila Railroad Company, of which he was an employee, to be used by the latter in the prosecution of Vicente K. Olazo, also an employee of the Railroad Company and at the same time president of the Union, constituted disloyalty and infidelity in the custody of documents, sufficient for expulsion from the Union. In his answer, Bugay argues that his action was neither wrong nor irregular because, according to the very constitution of the Union, Article 3, Section 1 (a), labor and management should cooperate (or help each other) and that as a member of the Union and as an employee of the Manila Railroad Company, it was even his duty, for purposes of cooperation, to lend the said documents of the Union to the railroad company.

The present petition for review may properly be decided on the regularity and validity of the proceedings and the means adopted by the Union and its officers in effecting said expulsion.

But touching, though lightly, on the merits of the case, particularly, the justification for the expulsion urged by the respondents, there is some force in the contention of respondent Bugay that the very constitution of the Union provides for cooperation between management and labor, and that they should help each other, and that because of that constitutional provision and policy, he (Bugay) felt that it was but proper that he should lend the documents in the files of the Union to the Railroad Company when needed by the latter. Besides, we should bear in mind that although Bugay as a member and as an auditor of the Union owed loyalty to the same, still he was equally an employee of the Railroad Company and also owed loyalty to the management. In other words, he had a divided loyalty. He could not very well be loyal to his Union and be disloyal to his employer, or vice-versa. Moreover, one may not say that in lending a document of the Union to the Company, Bugay committed an act of disloyalty to the Union. Said act may be one of disloyalty to Olazo whose interest might have been affected, even jeopardized, by the availability and use of said document by the Railroad Company, but it could in no manner affect or jeopardize the interests of the Union. Furthermore, the said document in question was being utilized by the

Railroad Company to prosecute Olazo for an alleged falsification of a document, which is a public crime. To help prosecute one guilty or allegedly guilty of a public crime is not exactly a condemnable or evil act. On the contrary, it is a civic duty the performance of which may be commended. Although prejudicial to the Union official sought to be prosecuted, it might even be favorable and to the interests of the Union itself because, if the charge is true and the prosecution succeeded, then said Union official and president will have been exposed, and convicted of a serious crime of falsification, and eventually separated from said Union.

The CIR found that the hearing of the charges against Bugay for disloyalty, infidelity in the custody of documents, etc. by the committee designated, was held in his absence, and that this was an irregularity because the record fails to show why he failed to attend said investigation. For the purposes of the present case, we may even assume that since he was duly notified of the date of the hearing, that was sufficient compliance with the requirements of due process. But the CIR also found that when the report of the committee finding him guilty of the charges and recommending his expulsion, was submitted to the Board of Directors and was acted upon, Bugay was also absent for the reason that the members of the committee designated to notify him to be present failed to see him, because he was then in Lucena, Quezon (Tayabas). This to us is an irregularity. We believe that Bugay had a right to appear before the Board, question the correctness and validity of the findings of the committee, including its recommendation, and otherwise defend himself. The Board before acting on the report and recommendation of the committee, specially before approving the same and passing a resolution expelling him from the Union, should have given Bugay an opportunity to be heard.

Again, the constitution of the Union provides that any resolution of the Board, such as expelling a member, should be approved or disapproved by the different chapters of the Union within ten days. The CIR found that only two chapters, those of the Hondagua Chapter and the Engineering Manila Yard Chapter, complied with this requirement. According to the petition, there are thirty-nine chapters of the Union; twenty-four voted for confirmation; four for rejection; five abstained; and six apparently took no action. Assuming that the two chapters casting their votes within the period of ten days voted for approval of the expulsion, then the remaining twenty-two chapters submitted their votes of approval beyond said period of ten days. But the petitioners claim that said period of ten days is merely directory, and that action by the different chapters on the

resolution of the court may be given beyond the said period. We are not prepared to hold that the said period is directory instead of mandatory. The Union should clarify this portion of its constitution and by-laws for the information and guidance not only of the different chapters of the Union, but also of its members who may have occasion to invoke and rely upon the same. In the meantime, the doubt should be resolved in favor of the respondent, Bugay, who was expelled from the said Union.

Then we come to the matter of Bugay's motion for reconsideration of the resolution of expulsion. According to the finding of the CIR, and the record, the Manila chapter of the Union to whom Bugay belonged, asked for the reconsideration of the resolution of expulsion. The petition was granted by the Board which passed a resolution reinstating him. This resolution was referred to the different chapters by the Union, but unfortunately, the said chapters did not take any action either in favor or against said resolution. One view of the silence of the chapters is that, when they failed to either approve or disapprove the resolution of reinstatement, then the first resolution of expulsion stood. Another view, however, is that when the motion for reconsideration of the resolution for expulsion was filed, the execution of said resolution was suspended, and when said petition for reconsideration was not only approved but another resolution was passed by the Board reinstating him, then the first resolution for expulsion was automatically set aside and rendered void, so that even if the resolution for reinstatement may not be executed and enforced because it was not approved by the majority of the chapters, at the same time there is no valid resolution of expulsion that may be executed.

Finally, the petitioners insist that the petition for reconsideration of the decision of the CIR of January 27, 1954 (1955) was improperly dismissed. It would appear that the rules of the Court of Industrial Relations provide that motions for reconsideration of the court's decision should be submitted within five days from the date of notice; that the motion shall be submitted with arguments supporting the same and that if the arguments cannot be submitted simultaneously with the motion, upon notice to the court the movant shall file the same within ten days from the date of the filing of his motion for reconsideration. According to the motion to dismiss the motion for reconsideration filed by Bugay, inasmuch as the motion for reconsideration was filed on February 8, 1955, then the argument in support thereof should have been filed within ten days thereafter, that is, on or before February 18, 1955; but up to March 2, 1955, when Bugay filed his motion to dismiss respondents' motion for reconsideration, he had

not received a copy of said argument. Despite the claim of the Union that it had mailed an exact copy of said arguments on February 15, 1955, the CIR apparently gave credence to Bugay's claim and dismissed the motion for reconsideration. Said dismissal is in accordance with the rules of the CIR to the effect that failure to observe the period provided by said rules relative to the filing of motions for reconsideration and arguments in support thereof shall be sufficient cause for dismissal of the motion for reconsideration.

Finding no valid reason for disturbing the decision of the CIR and its order of denial of the motion for reconsideration, the same are hereby affirmed, with costs.

Parás, C.J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J.B.L., Endencia, and *Félix, JJ.,* concur.

Decision affirmed.

[No. L-11192. April 16, 1958]

SILVERIO BLAQUERA, as Collector of Internal Revenue petitioner, *vs.* HON. JUDGE JOSE S. RODRIGUEZ, ET AL., respondents.

1. COURT OF TAX APPEALS; APPEAL AND ERROR; JURISDICTION; ASSESSMENT OF DEFICIENCY PERCENTAGE TAXES; LEVY BY DISTRAINED ON PROPERTIES.—Where a case involves not only the validity of the collection of deficiency percentage taxes, surcharges or compromises but also the legality or propriety of the levy by distraint on the properties of the taxpayer, it comes within the exclusive appellate jurisdiction of the court of Tax Appeal.
2. ID.; ID.; CORRECTNESS OF TAX ASSESSMENT; CONSEQUENTIAL OR MORAL DAMAGES.—The correctness or incorrectness of a tax assessment is for the Court of Tax Appeals to determine and not for the regular courts of justice. Nor is a case placed beyond the jurisdiction of that court simply because certain consequential or moral damages are demanded, for they are but incidental to the main case. This can be passed upon by the court if and when the evidence so warrants.

ORIGINAL ACTION in the Supreme Court. Prohibition and Certiorari with Preliminary Injunction.

The facts are stated in the opinion of the Court.

Assistant Solicitor General José P. Alejandro and *Solicitor Felicísimo R. Rosete* for the petitioner.

Provincial Fiscal José C. Borromeo and *Assistant Provincial Fiscal Ananías V. Maribao* for the petitioner.

Pacquiao, Jumapao & Badana for the respondent Cebú Olympian Company.

BAUTISTA ANGELO, *J.:*

This is a petition seeking to enjoin respondent Judge from enforcing his order of May 25, 1956 restraining the collection of the sum of ₱10,518.75 as deficiency percentage taxes and to set aside the order he has issued denying the motion to dismiss the action which gave rise to this incident on the ground of lack of jurisdiction over the subject-matter. This Court gave due course to the petition and issued the writ of preliminary injunction prayed for pending the determination of the case on the merits.

It appears that the Cebu Olympian Company, hereinafter designated as plaintiff, filed an action against the Collector of Internal Revenue, hereinafter designated as defendant, before the Court of First Instance of Cebu to enjoin the latter from collecting certain deficiency percentage taxes and, incidentally, to recover consequential and moral damages as an incident thereto. It is alleged that on November 12, 1955 defendant addressed to plaintiff a communication informing it that it was deficient in the payment of certain percentage taxes amounting to ₱8,375.00 which, in addition to the compromise fee of ₱50.00 and a surcharge of 25 percent, makes a grand total

of ₱10,518.75; that on November 21, 1955, plaintiff, through counsel, answered defendant's letter to the effect that it is not deficient in the payment of any percentage tax as shown by certain official receipts it has in its possession; that on December 19, 1955, defendant wrote another letter to plaintiff informing it that it had employed a business agent in effecting the payment of the aforesaid taxes and, as a consequence, it must suffer for any irregularity that said agent may commit giving rise to the deficiency in the payment of its taxes; that considering said claim to be incorrect, plaintiff retorted on January 11, 1956 stating that it had never employed a business agent in effecting the payment of its taxes, the truth being that it had paid the same directly to the office of the city treasurer of Cebu by way of checks issued by the plaintiff; that notwithstanding the full payment made by plaintiff of the percentage taxes claimed by defendant, the latter has threatened, and is threatening, to levy on plaintiff's property thereby causing irreparable damage to plaintiff's business and goodwill; and that because of defendant's act in levying on the properties of plaintiff for the purpose of compelling it to pay taxes which had been already paid, plaintiff has suffered consequential and moral damages in the amount of ₱8,000.00. Plaintiff, therefore, prayed for a writ of preliminary injunction pending determination of this case on the merits, which was granted *ex parte* upon a bond in the amount of ₱10,518.75.

On June 18, 1956, defendant moved to dismiss the complaint on the ground of lack of jurisdiction, it being his contention that this case should have been taken to the Court of Tax Appeals which has exclusive jurisdiction to review on appeal all decisions of the Collector of Internal Revenue in cases of disputed assessments, refund of internal revenue taxes, fees, or other charges, penalties impose in relation thereto, and other matters arising under the National Internal Revenue Code, or other law or part of law administered by the Collector of Internal Revenue, in accordance with Section 7 of Republic Act No. 1125. On July 6, 1956, the court denied the motion to dismiss and ordered defendant to enter his plea to the complaint within the reglementary period. And when his motion for reconsideration was denied, defendant interposed the present petition for certiorari.

The question for determination is whether the main case may be taken cognizance of by the court *a quo* or it should be brought on appeal to the Court of Tax Appeals under Section 7 of Republic Act No. 1125 in the exercise of its exclusive appellate jurisdiction.

The section above referred to provides, among others, as follows:

"SEC. 7. *Jurisdiction.*—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

"(1) Decision of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; * * *."

From what appears in the complaint in the light of the provisions above quoted, there can be no question that this case comes within the exclusive appellate jurisdiction of the Court of Tax Appeals for undoubtedly its subject-matter comes within the purview of the words "disputed assessments," or of "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue", specifically mentioned therein. This is inferable not only from the allegations of the complaint itself, but also from the writ of preliminary injunction granted by the court *a quo* on May 25, 1956, commanding the defendant, his agents, subordinates or persons acting in his behalf, to comply with the order of the court to refrain or desist from levying by way of distraint on plaintiff's properties. The power conferred by law upon the Collector of Internal Revenue to institute administrative remedies to collect taxes by means of distraint and levy on the property of any delinquent taxpayer is embodied in Chapter II, Sections 315–330, of the National Internal Revenue Code.

Indeed, plaintiff in the present case seeks not only to contest the collection of deficiency percentage taxes, surcharges or compromises demanded in the several letters addressed to it by defendant, but also to dispute the legality or propriety of the levy by distraint on the properties of the plaintiff by reason of its failure or refusal to meet the demand on the alleged reason that it has already fully paid the taxes demanded from it. The case is, therefore, an indirect appeal from the decision of the Collector of Internal Revenue on the assessment made by him with regard to certain deficiency percentage taxes, as well as from his decision to collect the same by the coercive summary measures prescribed by law, matters which come within the exclusive jurisdiction of the Court of Tax Appeals.

It is true that plaintiff claims that it has already fully paid the deficiency taxes demanded from it by the defendant, but this claim alone cannot take this case out of the jurisdiction of the Court of Tax Appeals, for the same still comes within the purview of the words *disputed assessment.* The correctness or incorrectness of a tax assessment is for that court to determine and not for the regular courts of justice. Nor can this case be placed

beyond the jurisdiction of that court simply because certain consequential or moral damages are demanded, for they are but incidential to the main case. This can be passed upon by that court if and when the evidence so warrants.

This case comes squarely within the frame of the decision rendered in Millares, et al. *vs.* Judge Amparo, et al., 51 Off. Gaz., 3464. That was a case of mandamus to compel the Collector of Customs to surrender certain merchandise impounded by the latter for the failure of the importer to obtain the necessary certificate of release from the Central Bank. Upon petition *ex parte,* the court *a quo* granted the writ of preliminary mandatory injunction. The motion to dissolve the writ having failed, the case was taken to the Supreme Court by way of certiorari, and one of the questions raised was whether "since the creation of the Court of Tax Appeals by Republic Act No. 1125, the Manila courts of first instance have lost jurisdiction over customs cases." The Court, in upholding the affirmative, made the following pronouncement:

"Republic Act No. 1125, section 7, effective June 16, 1954, gave the Court of Tax Appeals exclusive appellate jurisdiction to review on appeal, decisions of the Commissioner of Customs, involving 'seizure, detention or release of property affected * * * or other matters arising under the Customs law or other law administered by the Bureau of Customs." In our opinion this provision necessarily has taken away the power of the Manila Courts of First Instance to 'review', decisions of the Customs authorities, 'in any case of seizure'—as in this case—under section 1383 et seq. of the Revised Administrative Code.

"Consequently, the respondent judge had no authority to entertain the complaints of Serree Investments, Lim Hu and Fructuoso Nepomuceno, which, although entitled Mandamus and Certiorari were in reality petitions to review the actuations of the proper customs authorities, now exclusively reviewable by the Court of Tax Appeals (R. A. 1125). Furthermore, conceding that the complaints were strictly mandamus or certiorari civil actions, still they were groundless, the petitioners having an adequate remedy by appeal, as stated to the Court of Tax Appeals. Neither certiorari nor mandamus, it will be recalled, is available where relief by appeal is provided. Therefore, the complaints having no merit, issuance of the preliminary mandatory injunctions was clearly erroneous, and the challenged writs should be annulled.

"This conclusion makes it useless to pass on the question whether Circular No. 45 of the Central Bank prohibits the importation of this garlic shipment, and whether it is valid under the law, because the above is sufficient to dispose of these litigations. Neither is it necessary to discuss the issue for guidance in connection with future importations, because Republic Act No. 1296, effective on the 16th of this month prohibits, with penal sanctions, the importation of garlic, potatoes, etc., except for seedling purposes, which is not the case.

"WHEREFORE, the preliminary writs of injunction heretofore issued are hereby made permanent. The writs complained of are

annulled. Costs shall be paid by the respondents importers. So ordered." (51 Off. Gaz., pp. 3464–3465).

WHEREFORE, petition is granted. The orders involved herein are hereby set aside and the injunction issued by this Court made permanent, with costs against respondent Cebu Olympian Company.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Petition granted.

DECISIONS OF THE COURT OF APPEALS

[No. 19061–R. July 7, 1958]

LEON P. LOPEZ, plaintiff and appellant, *vs.* FRANCISCA DE TINIO, ET AL., defendants and appellees

1. MOTOR VEHICLES; COLLISION; RIGHT OF WAY OF FAVORED DRIVER AT AN INTERSECTION NOT ABSOLUTE.—"The right of the favored driver is not absolute, but is, rather, relative; that is, the right of way is not absolute in the sense that the favored driver is always justified in asserting and attempting to exercise the right of way, it having been said that the right of way rule is a rule of doubt under balanced conditions. Thus, the fact that one has the right of way does not warrant him in proceeding regardless of conditions or consequences or the safety of otehr." * * * * * "It has been held that too much insistence on the right of way, even when one is clearly entitled to it, is negligence, and may be the grossest kind of negligence. Thus, if the favored driver sees or should see that a situation of danger exists or is imminent, he is bound to act with reasonable caution to avoid a collision or other accident, even though this involves yielding the right of way, and even though it involves an actual stopping of his car." (60 C. J. S. 363).

2. ID.; ID.; ID.; PRE-EMPTION OF INTERSECTION; CASE AT BAR.—"Where the disfavored vehicle has properly first entered the intersection and pre-empted it, in accordance with the rules governing preemption of intersection, the favored driver must yield the right of way and take precautions to avoid a collision." (60 C. J. S., sec. 363). Plaintiff's car had arrived first at the intersection and had already pre-empted the right of way, even before defendant's jeepney arrived at the same intersection. Seeing that the car had thus pre-empted the right of way, it was incumbent upon the driver of the defendant's jeepney to have stopped his jeepney and allowed the car to proceed on its way. He was driving so fast that he rammed the jeepney against the car and then hurled itself to some distance before it finally stopped. The driver of the defendant's jeepney had been recklessly negligent and such negligence resulted in damage to plaintiff. As owner of the jeepney, defendant should be held responsible for such damages. The fact that the jeepney had been leased to the offending driver does not relieve defendant of the responsibility since there is no proof that the lease had been approved by the Public Service Commission.

APPEAL from a judgment of the Court of First Instance of Manila. Narvasa, *J.*

The facts are stated in the opinion of the Court.

Delfin L. Gonzales, for plaintiff and appellant.

Banzon, Villaruel & Manansala, for defendants and appellees.

PICCIO, *J.:*

At about 8:35 in the evening of October 2, 1954, at the intersection of Taft Avenue and Padre Faura Streets, Manila, there occurred a collision between a Buick Sedan with plate No. 1718–Manila driven by Felicisimo Mendoza

and owned by Leon P. Lopez and a passenger jeepney with plate No. TPU–2222–Manila driven by Hilario Ortiz and owned by Francisco de Tinio. Both vehicles were damaged and the passengers of the jeepney were injured. The two drivers were prosecuted in the Municipal Court of Manila for the crime of serious physical injuries through reckless imprudence (Exhibit E). The municipal court acquitted driver Felicisimo Mendoza, while driver Hilario Ortiz has not as yet been arrested.

For the damages suffered by his motor vehicle Leon P. Lopez filed in the Court of First Instance of Manila, against Francisco de Tinio, et al, a complaint wherein he seeks to recover from defendants, jointly and severally, the sum of ₱2,500.00 as actual damages; ₱1,000.00 as attorney's fees, and ₱5,000.00 as exemplary damages. Defendant Francisca de Tinio filed her answer with a counterclaim; defendant Hilario Ortiz could not be served with summons. Upon plaintiff's motion, the case was heard with respect to defendant Francisco de Tinio. After trial, the lower court rendered judgment dismissing plaintiff's complaint as well as defendant's counterclaim for lack of sufficient merit.

Plaintiff now appeals to this Court. He alleges that the lower court erred (1) in applying the doctrine of *res ipsa loquitur*, there being sufficient evidence upon which to make findings on what party was responsible for the collision; (2) that appellant's car was running fast at the time of the collision; (3) that appellant's car should have yielded the right of way to the jeepney; (4) that Felicisimo Mendoza was grossly negligent; and (5) that judgment should have been in favor of appellant.

The issue before us is whether or not the appellee-driver had been negligent in driving his jeepney, his negligence being the proximate cause of the collision.

The undisputed facts are:

Plaintiff-appellant's car was running along Padre Faura Street, towards Dewey Boulevard, while the jeepney was running along Taft Avenue towards Pasay City. Taft Avenue is a "through street".

According to plaintiff-appellant's evidence, before entering the intersection of Taft Avenue and Padre Faura, his driver, Felicisimo Mendoza, was running at the rate of 8 miles per hour because the car was following a slow-moving freight truck which was also going towards Dewey Boulevard. After crossing the intersection, the said truck suddenly stopped at the corner of Padre Faura and Taft Avenue, thus stalling plaintiff-appellant's car at the right lane of Taft Avenue. Suddenly, the jeepney driven by Hilario Ortiz rammed against the car. The impact caused the car to spin around the stop 30 paces away at the southeast corner of Taft Avenue and Padre Faura Streets.

The jeepney, however, continued toward the same direction and stopped 35 paces away from the place of the collision (Exhibit H). As a result of the accident, plaintiff-appellant's car was badly damaged for whose repairs plaintiff-appellant claim ₱2,500.00 for labor and materials (Exhibit B.) These facts may be gathered from the evidence submitted by plaintiff-appellant consisting of the testimony of Godofredo Villareal, a mechanic; Porfirio Ayuyao, a passenger of the jeepney; Alejandro Baliton, clerk of the municipal court of Manila; Cornelio Palomo, patrolman of the Manila Police Department; Jose L. Santos, another passenger of the jeepney and Delfin L. Gonzales, plaintiff's counsel and of documents marked as Exhibits A to I, inclusive.

Defendant-appellee Francisca de Tinio, submitted evidence consisting of the testimony of Pat. Cornelio Palomo; Sgt. Crispin Nievera of the Manila Police Department; her son, Nicanor Tinio; Alejandro Baliton; and Simeon S. Samin, a businessman from Cabanatuan City; and of documents marked as Exhibits 1 to 7, inclusive.

Defendant-appellee relies on the motor vehicle accident report (Exhibit 1) of patrolman-investigator Cornelio Palomo wherein he stated that plaintiff-appellant's car collided with defendant-appellee's jeepney. She also relies on the testimony of Simeon S. Samin who testified to the following: At the time and date in question he was at the northwestern corner of the intersection of Taft Avenue and Padre Faura Streets, standing on the sidewalk waiting for a taxi. Suddenly he heard the sound of screeching tires. Then he saw a black car (plaintiff-appellant's car), without headlights, hit the passenger jeepney which he recognized as belonging to that of his friend Nicanor Tinio, so he took a taxi and went to see Nicanor in order to report the accident.

Plaintiff-appellant submitted evidence to show that Hilario Ortiz was driving defendant-appellee's jeepney in a most negligent and reckless manner. The two passengers of the jeepney pointed to Ortiz as being the one who was grossly negligent. In his sworn statement (Exhibit G), Jose L. Santos declared that the jeepney was running very fast, that is, at approximately 30 to 40 miles per hours; that Hilario Ortiz was not concentrating his attention on driving the jeepney, for he was then talking to a woman seated near him; and that when the jeepney was already nearing the intersection of Padre Faura and Taft Avenue, Hilario Ortiz was trying to race with another jeepney, in order to reach first the sidewalk in front of the Philippine General Hospital where there were passengers waiting for jeepneys. It is true that Jose L. Santos attempted to repudiate his sworn statements (Exhibit G) which we believe have been given freely and spontaneously as the

real facts, while his attempted repudiation thereof was merely an after thought with which to favor the defendants-appellees.

More, another passenger of the jeepney has sufficiently established that driver Ortiz was recklessly negligent in driving the jeepney. We are referring to Porfirio Ayuyao who testified that the jeepney was running at top speed because he was trying to overtake another jeep (p. 3 to 6, t. s. n., January 11, 1956). It should be noted that the speed limit in the place where the accident occurred is 20 miles per hour. Ortiz' action in driving the car to top speed (that is from 30 to 40 miles per hour, according to Jose Santos) shows that he was very negligent in operating the vehicle.

On the other hand, no sufficient evidence has been established upon which to reasonably infer that the driver of plaintiff-appellant's car had been speeding at the time of the collision. In the statement he made to the police investigator (Exhibit 1), Felicisimo Mendoza declared that "when we were at the corner of Pennsylvania and Padre Faura, I slowed down because of a freight truck ahead. So I followed the corner of Taft Avenue and Padre Faura. The truck proceeded on its way and crossed Taft Avenue, but I slowed down at the corner to see if I was free to cross, and when I saw that there were no vehicle coming from the south of Taft Avenue and believing that the jeepney that was coming from my right (north) was still far, I went ahead. But the truck that I was following stopped at the other corner of Padre Faura after crossing Taft Avenue. So, what I did was to stop after passing the middle of Taft Avenue".

From the aforequoted portion of the statement given by plaintiff-appellant's driver, it may be gathered that immediately before the collision, plaintiff-appellant's car had crossed the middle of Taft Avenue and was already on the very lane where the collision took place. The car stopped at that place because the truck ahead of it stopped at the corner of Taft Avenue and Padre Faura. There is no doubt that Taft Avenue is a "through street" (paragraph 9, Rule 4, Ordinance No. 2646, otherwise known as Traffic Code of the City of Manila); and that under ordinary circumstances, defendant-appellee's jeepney would have had the right of way over plaintiff-appellant's car which was running along Padre Faura (Section 59, Act No. 3992, as amended, known as the Revised Motor Vehicle Law). If the circumstances were such that both plaintiff-appellant's car and defendant-appellee's jeepney were approaching the intersection at the same time, it is perfectly clear that the jeepney had the right of way and the car must have yielded the way. The rule is that "the disfavored driver must yield the right of way to a vehicle approaching

from a favored direction if there is a possibility of a collision. This duty to yield is ordinarily presented in a situation where the two vehicles come nearing the intersection about the same time. Under such circumstances it is his duty to slow down, and even stop, if this is necessary to permit the passage of the other car ahead of him; and it has been said that the duty of the driver of the car proceeding from the disfavored direction may extend as far as to require him to reverse and withdraw his car if necessary to give way to the car having the right of way. A fortiori, where the vehicle proceeding from the favored direction reaches the intersection before the other vehicle, it is the duty of the driver of the latter to yield." (60 C. J. S. 363). However, "regulations with respect to the right of way at intersections must receive a reasonable construction; and, while the engrafting of exceptions on the statutory rule concerning the duty to give the right of way is not to be favored, a driver is not in all cases under a duty to yield the right of way to another driver merely because the latter is traveling in the favored direction. Thus, a driver traveling in the disfavored direction is not required to wait for the passage ahead of him of a vehicle approaching from the favored direction where it is reasonably apparent that he can cross ahead of such vehicle with entire safety; and he is, accordingly, warranted in proceeding across an intersection which he reaches so much in advance of a vehicle approaching from the favored direction that he has ample time to cross the intersection at a reasonable speed before the other vehicle enters it or that a reasonably prudent man under like conditions would attempt to cross in front of the approaching vehicle. It has even been considered that the vehicle traveling in the disfavored direction has the right to proceed if it reaches the intersection substantially in advance of the other vehicle. A fortiori, a driver is not required to wait before undertaking to cross an intersection until there is no vehicle in sight approaching from such direction as to be entitled to the right of way." (60 C. J. S., Sec. 363). Furthermore, "the right of the favored driver is not absolute, but is, rather, relative; that is, the right of way is not absolute in the sense that the favored driver is always justified in asserting and attempting to exercise the right of way, it having been said that the right of way rule is a rule of doubt under balanced conditions. Thus, the fact that one has the right of way does not warrant him in proceeding regardless of conditions or consequences or the safety of other." * * * * * "It has been held that too much insistence on the right of way, even when one is clearly entitled to it, is negligence, and may be the grossest kind of negligence. Thus, if the favored driver sees or should see that a situation of danger exists or is imminent, he is bound to act with reasonable caution to

avoid a collision or other accident, even though this involves yielding the right of way, and even though it involves an actual stopping of his car.

"The driver proceeding in the favored direction has not the right to attempt to cross ahead of a person who reaches, or if both travel at a lawful rate of speed will reach, the intersection a sufficient length of time before him to be able to cross safely; and under such circumstances he should not increase his speed in order to pass ahead of the other vehicle. Similarly, it has been held that where the disfavored vehicle has properly first entered the intersection and pre-empted it, in accordance with the rules governing pre-emption of intersection, the favored driver must yield the right of way and take precautions to avoid a collision." (60 C. J. S., sec. 363).

Plaintiff-appellant's car had arrived first at the intersection of Taft Avenue and Padre Faura and had already pre-empted the right of way, even before defendant-appellee's jeepney arrived at that same intersection. Seeing that the car had thus pre-empted the right of way, it was incumbent upon the driver of the jeepney to have stopped his jeepney and allowed the car to proceed on its way. This, the driver failed to do because he was driving the jeepney at top speed. He was driving so fast that he rammed the jeepney against the car and then hurled itself to some marked distance before it finally stopped 35 paces from the point of contact.

The positions of the two vehicles right after the collision are indicative of the negligence of defendant-appellee's driver. The lower court found that "if plaintiff's car was stopped as stated by plaintiff's driver and it was struck in that position by defendant's jeepney, then the nature of the damaged parts or injuries would have been different". This conclusion is not supported by the evidence. We are more inclined to believe the theory submitted by plaintiff-appellant. The result of the collision was such that plaintiff-appellant's car was spun around and was thrown towards the southeast corner of Taft Avenue and Padre Faura streets, and as we have found, the jeepney stopped 35 paces from the place of the collision. If we subscribe to the version presented by defendant-appellee, the results of the accident should have been entirely different. The car is very much heavier and has a greater mass than the jeepney. If it had been running fast and was the one which had hit the jeepney, it would have generated a force of such magnitude that upon hitting the jeepney the latter would have turned turtle while the car would have continued in the same direction it was taking before the collision, that is, along Padre Faura towards Dewey Boulevard. The fact that the car was spun around while the jeep continued in the same direction, that

is, towards Pasay City, to our mind proves that it was the jeepney which hit the car.

Plaintiff-appellant has proven by a preponderance of evidence that the driver of defendant-appellee's jeepney had been recklessly negligent and that such negligence resulted in damage to plaintiff-appellant. As owner of the jeepney, defendant-appellee should be held responsible for such damages. The fact that the jeepney had been leased to Hilario Ortiz (Exhibit 4) does not relieve defendant-appellee of the responsibility. There is no proof that the lease had been approved by the Public Service Commission. Such being the case, defendant-appellee is the one responsible for the consequences of the collision under consideration (Marcelino Cardenas *vs.* Valentin A. Fernando, et al., CA–G. R. No. 13759–R, promulgated November 20, 1957, citing the case of Montoya *vs.* Ignacio (G. R. No. L–5868, decided December 29, 1953, 50 Off. Gaz., No. 1, p. 108, January, 1954).

Plaintiff-appellant has submitted evidence tending to prove that he spent ₱2,500.00 for the repairs of his car (Exhibit C and C–1). Although defendant-appellee did not question the extent of these damages, the Court after examining plaintiff's evidence, considers the claim as excessive and reduces same to ₱2,000.00. Plaintiff, however, is not entitled to attorney's fees because it has not been suffciently established that defendants acted in bad faith in refusing to satisfy plaintiff-appellant's claim. Niether, could there be exemplary damages for cases of this kind.

For all the foregoing considerations, we hereby reverse the appealed decision and order defendant-appellee to pay plaintiff-appellant the sum of ₱2,000.00, with legal interests from the filing of the complaint. No costs.

SO ORDERED:

Ocampo and *Santiago, JJ.*, concur.

Judgment reversed.

[No. 22834-R. July 9, 1958]

BOARD OF DIRECTORS, PHILIPPINE NATIONAL BANK, petitioner, *vs.* THE HON. ANTONIO LUCERO, Judge of the Court of First Instance of Manila, and OSCAR C. MELLA, respondents.

1. EXECUTION; JURISDICTION; TRIAL COURT LOSES JURISDICTION AFTER APPROVAL OF APPEAL BOND AND RECORD ON APPEAL.—The approval of the appeal bond and the record on appeal is the act that removes a case from the trial court's control and jurisdiction in such a manner that it can no longer vacate or modify its decision or order the discretionary execution of the same (Sumulong *vs.* Imperial, 51 Phil. 251; Vda. de Syquia *vs.* Concepcion and Palma, 60 Phil. 186; De la Fuente *vs.* Jugo, 76 Phil. 262; De Leon *vs.* De los Santos, 78 Phil. 461).

2. ID.; ID.; TRIAL COURT'S POWER TO ORDER ADVANCED EXECUTION STRICTLY CONSTRUED.—The general rule is that execution shall issue only when a judgment or order becomes final, with the exception that upon motion of the prevailing party with notice duly served upon the adverse party, the trial Court may, in its discretion, order execution before the perfection of the appeal based upon good reasons to be stated in the corresponding order. This should be strictly and restrictively construed, it being an exception to the general rule, and an advanced execution should not be ordered in the absence of the requisites provided for in the rule establishing the exception. The purpose of this restrictive policy is to preserve the *status quo* of the case before its final determination and to prevent an indiscriminate issuance of a writ of premature execution, because "the damages which arise from immediate execution cannot sometimes be fully compensated by the provisions for restitution and, accordingly, immediate execution should be decreed only if superior circumstances demanding urgency outweigh the above considerations." (Aguilos *vs.* Barrios et al., 72 Phil. 285, 287).

ORIGINAL ACTION in the Court of Appeals. Certiorari with preliminary injunction.

The facts are stated in the opinion of the Court.

Ramon B. de los Reyes, for petitioner.

Delfin L. Gonzalez, Edgar C. Mella and *Homer C. Mella,* for respondents.

CABAHUG, *J.:*

Oscar C. Mella, an erstwhile paying teller employed by the Philippine National Bank with an annual salary of ₱3,100.00, was dismissed on April 16, 1952. Alleging that the said dismissal was without cause and due process of law, Mella filed on April 12, 1955, with the Court of First Instance of Manila, a twice amended petition for mandamus (civil case 25926) against the board of directors of the said bank, praying for his reinstatement and the payment of his back salaries plus ₱105,000.00 for moral, nominal and exemplary damages and attorney's fees. Respondent board denied the material averments

of the petition, especially the allegation that therein petitioner was dismissed without cause and proper investigation. After due trial, the Court below, Hon. Antonio Lucero presiding, rendered judgment on January 6, 1958, declaring Oscar C. Mella's dismissal improper and without justifiable cause; ordering the therein respondent to pay petitioner's back salaries at the rate of ₱3,100.00 per year; and awarding to said petitioner ₱5,000.00 for moral damages and ₱3,000.00 for attorney's fees. Both parties were notified of this judgment on the 10th of the same month.

On January 25, 1958, respondent board of directors filed its notice of appeal with a deposit of ₱60.00 as appeal bond. It was requested in the said notice that in lieu of the record on appeal, the original record be transmitted to this Tribunal pursuant to the provisions of section 17, rule 41, Rules of Court. No request for the approval of the appeal bond was made nor was a notice thereof served upon the prevailing party. The losing party merely sent to petitioner therein through registered mail a copy of its (respondent's) notice of appeal. Hence, no action has been taken on the matter.

On January 31, 1958, therein petitioner registered an urgent motion for partial execution of judgment pending appeal on the ground that he was suffering great financial hardships and extreme humiliation since his dismissal, which motion was strongly opposed by therein respondent. This motion was denied by the lower Court on February 3, 1958 on the ground that it "has already lost jurisdiction over the case." However, upon therein petitioner's motion to dismiss the appeal or, alternatively, to reconsider this denial order, the said order, respondent's opposition notwithstanding, was reconsidered in another one dated March 4, 1958, which at the same time denied the dismissal of the appeal and ordered the partial execution of the appealed judgment in the amount of ₱3,100.00.

Its motion for the reconsideration of this last order having been denied, respondent therein filed with this Tribunal the instant petition for certiorari with preliminary injunction against Hon. Antonio Lucero, in his capacity as Judge of the Court of First Instance of Manila, and Oscar C. Mella, seeking the annulment of the aforecited order. In their answer, herein respondent admit almost all of the allegations of the petition except that which pertains to respondent judge's having acted without or in excess of his jurisdiction and/or with grave abuse of discretion when he issued the order complained of and that he had already lost control over civil case 25926 when he did so.

As in the trial Court, herein petitioner assails the aforementioned order of March 4, 1958 as being illegal and issued without or in excess of jurisdiction and/or with grave abuse of discretion because (a) on the date of its issuance the Court below had already lost its control over civil case 25926; (*b*) there was no good reason warranting even a partial premature execution; and (*c*) should the judgment be executed prematurely, the injury which may be wrought upon herein petitioner would be irreparable in the event that the said appealed judgment in that case be reversed by the appellate courts.

It is apparent that the reason first advanced is untenable. It is already well settled in this jurisdiction that the approval of the appeal bond and the record on appeal (appeal bond only in civil case 25926 it being a mandamus case) is the act that removes a case from the trial court's control and jurisdiction in such a manner that it can no longer vacate or modify its decision or order the discretionary execution of the same (Sumulong *vs.* Imperial, 51 Phil. 251; Vda. de Syquia *vs.* Concepcion and Palma, 60 Phil. 186; De la Fuente *vs.* Jugo, 76 Phil. 262; De Leon*vs.* De los Santos, 78 Phil. 461).

The other two reasons invoked by herein petitioner are so intimately related with one another that they should be discussed together. In fact, it can be safely said that the third merely supports and strengthens the second.

As we have previously held in Rodriguez & Co. *vs.* Conde et al., CA–G.R. No. 20076–R, August 30, 1957, the general rule is that execution shall issue only when a judgment or order becomes final, with the exception that upon motion of the prevailing party with notice duly served upon the adverse party, the trial Court may, in its discretion, order execution before the perfection of the appeal based upon good reasons to be stated in the corresponding order. This should be strictly and restrictively construed, it being an execption to the general rule, and an advanced execution should not be ordered in the absence of the requisites provided for in the rule establishing the exception. The purpose of this restrictive policy is to preserve the *status quo* of the case before its final determination and to prevent an indiscriminate issuance of a writ of premature execution, because "the damages which arise from immediate execution cannot sometimes be fully compensated by the provisions for restitution and, accordingly, immediate execution should be decreed only if superior circumstances demanding urgency outweigh the above considerations." (Aguilos *vs.* Barrios et al., 72 Phil. 285, 287.)

In the case at bar, this restrictive policy must be adhered to fully because it is undeniable that once herein respondent Oscar C. Mella receives the ₱3,100.00 fixed

by respondent judge as the amount to be partially paid, the Philippine National Bank, represented in the instant case by herein petitioner, cannot in any manner be compensated should the judgment rendered in civil case 25926 be reversed on appeal. And the best and most solid ground for this conclusion is respondent Mella's own motion for immediate partial execution which states as its main reason his hardships which made him depend "for his livelihood and that of his family mainly upon the help of his friends and relatives."

From the considerations supporting the issuance of the controverted order, it is crystal clear that respondent judge, in ordering the same, was swayed by powerful emotions of mercy and compelling humanitarian sentiments for the piteous plight of respondent Mella and his wife who, because she worked so hard for the sustenance of the family during her husband's period of unemployment, contracted an ovary ailment which required hospitalization. In fact, respondent judge himself said that should his judgment, "reached after a long and tedious process, be unfortunately reversed and restitution becomes impossible as against Mella, still the amount that had been granted to him could just be classified as assistance to a man in distress."

We also symphatize with respondent Mella and his family in their predicament; we also feel and believe that mercy and charity are laudable Christian virtues. Nevertheless, judicial questions are not determined on the grounds of charity and mercy, but must be settled on the basis of rights and duties as these are defined and provided for in existing laws and regulations. It is important to note that petitioner board of directors is managing and directing the affairs not of a charitable institution but of a banking one with a charter providing for its creation and proper operation at a profitable, not charitable, level.

From the foregoing, we are constrained to hold, as we hereby hold, that the order for the immediate execution, albeit partial, of the judgment rendered in civil case 25926 was not supported by good reason and, therefore, the said order was issued in excess of the trial Court's jurisdiction and/or with grave abuse of its discretion. It would have been otherwise had therein petitioner and herein respondent Mella posted a bond to answer for any damage which therein respondent, herein petitioner, may suffer as a result of the advanced execution in dispute. By itself, the posting of the bond would have been a good reason for an advanced execution of judgment (Hacienda Navarra, Inc. *vs.* Labrador et al., 65 Phil. 536).

WHEREFORE, this original petition for certiorari is granted and the order dated March 4, 1958 is hereby annulled. The preliminary injunction previously issued is made to stand unless and until this Court, in deciding the appeal, orders otherwise. No special pronouncement as to the payment of the costs.

IT IS SO ORDERED.

Dizon and *Peña, JJ.*, concur.

Petition granted.

[No. 18409-R. June 14, 1958]

JOSE LUNOR and DANIEL OYAPOC, petitioners and appellants *vs.* JUAN LUNA, as MUNICIPAL MAYOR, THE MUNICIPAL COUNCIL, and the MUNICIPAL TREASURER, all of Oslob, Cebu, respondents and appellees.

PUBLIC OFFICERS; ABOLITION OF OFFICE; ABOLITION MUST BE IN GOOD FAITH.—It has been generally held that the power to create carries with it the power to destroy. In the very nature of things, however, the power to destroy, to abolish, to reorganize is not an absolute one, nor may it be exercised without limitations, capriciously and arbritrarily. So, while it has been held that where the office is of legislative creation, the legislative body that created it may, *unless prohibited by the Constitution*, control, modify, or abolish it whenever such course, in its opinion, may seem necessary, expedient, or conducive to the public good; that this power may be exercised at any time and even while the office is occupied by a duly elected or appointed incumbent because neither the legislature nor the people is under obligation to continue a useless office simply for the benefit of the incumbent; that tenure of office and civil service statutes do not prevent a *bona fide* abolition of an office (42 Am. Jur. 904–905), the weight of authority is to the effect that in such cases the office must be abolished in good faith (37 Am. Jur., 857–858). When the abolition constitutes an abuse of power, when behind it are petty, personal, partisan, or other malicious motivations, the courts—if they are to be the last bulwark of constitutional government—must come to the rescue of the aggrived party and "make the hammer fall and heavily". This good faith theory has been recognized and applied in this jurisdiction (Zandueta *vs.* De la Costa, 66 Phil., 615, dissenting opinion; Brillo *vs.* Enage, L–7115, March 30, 1954).

APPEAL from a judgment of the Court of First Instance of Cebu. Mejia, *J.*

The facts are stated in the opinion of the Court.

Fernando S. Ruiz, for petitioners and appellants.

Francisco E. F. Remotigue & Ramon B. Manuel, for respondents and appellees.

DIZON, *J.:*

Appellants Jose Lunor and Daniel Oyapoc filed the present action for mandamus to compel appellees to reinstate them to their positions of clerk-janitor and clerk-registrar, respectively, in the office of the municipal treasurer of Oslob, Cebu, abolished when appellees approved the budget for the fiscal year 1952–53. The issue arising from the pleadings filed by the parties below is the legality of the abolition of said positions.

The following facts are not in dispute, the same having been stipulated by the parties:

"On 19 August 1919, the petitioner Jose Lunor was appointed 'mozo' for the municipality of Oslob, Cebu, by then Municipal President, Mr. Ireneo Rendon, the appointment effective as of 16 August 1919 (Annex 'A', Stipulation of facts). On the other hand,

petitioner Daniel Oyapoc was appointed janitor in the office of the Municipal Mayor of Oslob on 17 February 1941, by the said Municipal Mayor Rendon, his appointment to take effect on the same date (Annex 'B', stipulation of Facts). In 1922 petitioner Jose Lunor was transferred from his position as "mozo" to clerk-janitor in the office of the Municipal Treasurer (Par. 3, Stipulation of Facts). In 1951, petitioner Oyapoc was likewise transferred from his position as janitor in the office of the Municipal Mayor to clerk-registrar in the office of the Municipal Treasurer. No new appointment was extended to Oyapoc upon his said transfer (Pars. 4 and 5, Stipulation of Facts).

"Before the approval of the municipal budget for the fiscal year 1952-53, respondent Municipal Council approved Resolution No. 34, dated 15 March 1952, requesting the Provincial Treasurer of Cebu to intercede in its behalf before the Provincial Board of Cebu in order to effect a projected abolition of some positions in the office of the Municipal Treasurer. This resolution of the Municipal Council was referred by the Provincial Treasurer to the Provincial Board which, in its Resolution No. 774, dated 16 May 1952, suggested that if the Municipal Council of Oslob deemed it advisable in the best interest of the municipality to eliminate positions in the office of the Municipal Treasurer, it could do so upon preparation and approval of the plantilla of personnel for the next fiscal year (Annex 'L', Stipulation of Facts).

"In line with the Provincial Board's Resolution No. 744, Annex 'L', respondent Municipal Council abolished in the 1952-53 municipal budget the position of clerk-janitor and clerk-registrar occupied by petitioners Lunor and Oyapoc, respectively, by means of its Resolution No. 61 and Ordinance No. 53 (Annexes 'C' and 'D', Stipulation of Facts). In the said budget, the salary of the Municipal Mayor reduced from ₱1,440.00 to ₱1,370.00 per annum (Paragraph 8, Stipulation of Facts).

"Upon the municipal budget of Oslob being forwarded to the Department of Finance, the Honorable Undersecretary of Finance, on 23 May 1953, approved the proposed diminution in the salary of the Municipal Mayor, but disapproved the abolition of petitioners' positions (Annex 'E', Stipulation of Facts). Acting upon the Finance Undersecretary's communication of 23 May 1953 (Exhibit 'E'), the then Provincial Treasurer of Cebu, Mr. Pedro Elizalde, in his first indorsement of 19 June 1953, instructed respondent Municipal Treasurer of Oslob to immediately reinstate petitioners to their respective positions (Annex 'P', Stipulation of Facts). However, the Municipal Treasurer could not comply with the Provincial Treasurer's aforesaid indorsement, for lack of appropriation in the municipal budget (Paragraph 11, Stipulation of Facts).

"It appears that in the meantime, on 15 May 1953, respondent Municipal Council of Oslob referred to the Honorable, the Undersecretary of Finance, the claim of herein petitioners for salary, it having been found that the acting Municipal Treasurer, Mr. Teofilo Mirasol, had allowed them to continue working in their respective positions notwithstanding the elimination from the municipal budget of their positions, pursuant to Resolution No. 61 (Exhibit 'G').

"On 2 October 1953, the Acting Undersecretary of Finance sent a communication to respondent Municipal Council of Oslob, through the Provincial Treasurer of Cebu, reiterating its previous stand of 31 July 1953, for the retention of herein petitioners (Annex 'H', Stipulations of Facts). By way of a petition for reconsideration of the Finance Department's action on the abolition of petitioners' positions, respondent Municipal Council on 15 February 1953 adopted Resolution No. 8 denying any political motives in the elimination of peti-

tioners' positions in the budget, and urging the Department to review its stand on the matter (Annex 'I', Stipulations of Facts). No action has yet been taken by the Department of Finance on the aforesaid resolution (Paragraph 15, Stipulation of Facts).

"Because of their continued exclusion from the Municipal Budget of Oslob, Cebu, petitioner Lunor, on 12 February 1954, brought the matter to the attention of the Presidential Complaints and Action Committee of the Office of the President of the Philippines, which Committee, on 8 March 1955, sent a communication to said petitioner, enclosing therein copy of the letter of the Undersecretary of Finance of 5 November 1954, addressed to the Provincial Treasurer of Cebu, wherein the Undersecretary of Finance requested the Provincial Treasurer of Cebu to order the restoration of petitioners to their respective positions in accordance with the Finance Department's letter to the Municipal Council of Oslob of 23 May 1953 (Annexes 'J' and 'J-1', Stipulation of Facts). Acting on the Finance Department's letter (Annex 'J-1', Mr. D. Toledo, Acting Provincial Treasurer of Cebu, on 10 February 1955, replying to an inquiry of petitioners, sent a written communication to petitioner Lunor quoting therein the Finance Department's letter of 5 November 1954.

"No new position was created by respondent Municipal Council after the abolition of petitioners' positions, except that of one policeman with a salary of ₱40 a month."

The testimonial evidence presented by appellants to supplement the stipulation of facts tended to prove firstly, that politics was the real motive behind the abolition of their positions, and secondly, that, at any rate, the resolution abolishing their positions was legally ineffective because it was disapproved by the Department of Finance.

Upon the other hand, appellees' evidence tended to prove that the abolition was dictated by reason of economy and was not done in good faith, and that, for the validity of the resolution abolishing appellants' positions, the approval of the Department of Finance was not necessary.

The lower court upheld appellees' views and, as a result, dismissed the petition for mandamus without costs. Hence this appeal.

It has been generally held that the power to create carries with it the power to destroy. In the very nature of things, however, the power to destroy, to abolish, to reorganize is not an absolute one, nor may it be exercised without limitations, capriciously and arbitrarily. So, while it has been held that where the office is of legislative creation, the legislative body that created it may, *unless prohibited by the Constitution,* control, modify, or abolish it whenever such course, in its opinion, may seem necessary, expedient, or conducive to the public good; that this power may be exercised at any time and even while the office is occupied by a duly elected or appointed incumbent because neither the legislature nor the people is under obligation to continue a useless office simply for the benefit of the incumbent; that tenure of office and civil service statutes do not prevent a *bonafide* abolition of an office (42 Am. Jur., 904–905), the weight of authority is to the effect that in such

cases the office must be abolished *in good faith* (37 Am. Jur., 857–858). When the abolition constitutes an abuse of power, when behind it are petty, personal, partisan, or other malicious motivations, the courts—if they are to be the last bulwark of constitutional government—must come to the rescue of the aggrieved party and "make the hammer fall and heavily." This good faith theory has been recognized and applied in this jurisdiction (Zandueta *vs.* De la Costa, 66 Phil., 615, dissenting opinion; Brillo *vs.* Enage, L–7115, March 30, 1954).

It has been sufficiently established that appellants, who had been employed in the municipal government of Oslob for many years—Lunor since 1919, and Oyapoc since 1941—were identified with the one of the major political factions of Cebu province and that while the respondent municipal mayor and several of the members of the municipal council were elected to office as candidates of the same political faction, they subsequently changed political colors and adhered to the opposing faction; that appellant Lunor in particular had been repeatedly charged with electioneering by the respondent municipal mayor, said charge having been dismissed; that while resolution No. 61 abolished the positions of appellants *temporarily*, the respondent mayor and the municipal council made no attempt afterwards to recreate said position in spite of the fact that the finances of the municipality had improved to the extent of justifying a general increase of salaries for the fiscal year 1954–1955, except for the municipal mayor and the municpal treasurer; that in reality, as early as July 1, 1952, the municipality of Oslob appeared to have had an unappropriated balance of more than ₱2,700 as it had, for the fiscal year 1952–1953, an estimated amount of ₱20,353.49 available for appropriation against an expenditure of only ₱17, 620.11—this showing that appellants' yearly salaries at ₱360 per annum could have been easily taken care of. These circumstances—to which we must add the fact that the Municipal Treasurer of Oslob opposed the abolition of the positions in question—are sufficient, in our opinion, to belie the claim that the elimination of appellants' positions was dictated by reason of economy.

The circumstance that the municipal council of Oslob, before abolishing appellants' position, sought the opinion of the provincial board of Cebu who made the suggestion that the municipal council could eliminate some positions in the office of the municipal treasurer if it considered it advisable to do so in the best interest of the municipality, does not save the situation, for this court can take judicial notice of the fact that the provincial board aforesaid was at the time integrated or composed of members of the political faction opposing that to which appellants belonged.

Neither is appellees' position improved by the circumstance that the resolution abolishing the positions of appellants also provided for a reduction of salary for the respondent municipal mayor, because such reduction was very insignificant and it could have been devised merely as a smoke-screen to show that economy was really the motivating force behind the resolution.

Aside from the above we find in the record of this case a very significant circumstance that induces us to believe that economy was not the reason for the temporary elimination of appellants' positions. It is the statement made in resolution No. 8 approved by the municipal council of Oslob on February 15, 1955 in answer to the communication of the Undersecretary of Finance dated November 5, 1954 ordering the provincial treasurer of Cebu to restore the abolished positions and to the indorsement of the provincial treasurer of January 12, 1955 recommending to the municipal council the restoration of said positions, to the effect that "the personnels occupying the positions of clerk-registrar and clerk-janitor were undesirable, incapable and not civil service eligibles. They were appointed to said positions contrary to the law of nepotism and further the municipal council have no confidence in them". This, in our opinion, betrays and reveals the real reason behind the abolition of the positions of appellants: the municipal council considered them as "undesirable" and had "no confidence in them". If such was the case we believe that, before their dismissal, appellants were at least entitled to a hearing, to a reasonable opportunity to show that they were "capable" and that they had done nothing to make them lose the confidence of the municipal council. As to their not being civil service eligibles, there is no sufficient evidence in the record, nor has it been shown that the positions they had occupied for so many years required such eligibility.

In the view we take of this case we deem it unnecessary to pass upon the other question of whether the approval of the Department of Finance—which was withheld—was necessary to give legal force and effect to resolution No. 61 abolishing the positions of appellants.

WHEREFORE, judgment is hereby rendered reversing the appealed judgment and another is hereby rendered requiring respondents to reinstate appellants to their former positions.

SO ORDERED.

De Lean and *Peña, JJ.*: concur.

Judgment reversed.

[Nos. 20262–R and 20263–R. July 15, 1958]

TESTATE ESTATE OF LORENZO ZAYCO. TESTATE ESTATE OF FLORA RUBIN. SOCORRO ZAYCO, petitioner and appellee, *vs.* MANILA TRADING & SUPPLY CO., claimant and appellant.

1. SUCCESSION; INHERITANCE; HEREDITARY RIGHTS MAY BE SOLD ON EXECUTION; VENDEE ENTITLED TO ACCOUNTING.—An heir may sell his hereditary rights to a third person before partition of the estate (Art. 1088, Civil Code), or said right's may be attached by a judgment creditor (Sec. 9, Rule 59, Rules of Court), or caused to be sold on execution (Gotauco and Company *vs.* Register of Deeds of Tayabas, 59 Phil. 756). And one who purchases real property in execution sale shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor thereto, subject to the right of redemption. (Sec. 24, Rule 39, Rules of Court; Cabuhat *vs.* Ansay, 42 Phil. 170, 173; Laxamana *vs.* Carlos, 57 Phil. 722; Lim Liin Uan *vs.* Laag, 51 Phil. 930; Villegas *vs.* Tan, 57 Phil. 656; Cruz *vs.* Sandoval, 69 Phil. 736; Barrido *vs.* Barreto, 72 Phil. 187). Said vendee is entitled to an accounting to be rendered by the administrator of the estate pursuant to Rule 86 of the Rules of Court.
2. ID.; ID.; RIGHT TO ENTIRE INHERITANCE, WHEN TRANSMITTED TO HEIR.—By devolution or descent, an heir is entitled from the moment of death of the decedent to the entire inheritance which includes not only the property and the transmissible rights and obligations existing at the time of his (decedent's) death, but also to those which have accrued thereto since the opening of the succession (Arts. 777 and 781, Civil Code).
3. ID.; ID.; SALE OF UNDIVIDED PORTION OF HEREDITARY ESTATE IN CUSTODIA LEGIS, VALIDITY.—It cannot be said that an heir cannot sell or a creditor cannot attach the indivisible and indeterminate share in the inheritance because it is in *custodia legis*. Passing upon an identical question, the Supreme Court said that if what the heir conveyed was merely his rights and interests as an heir in a portion of the hereditary estate, the sale is not necessarily void, although it should be held subject to the result of the administration proceedings. In a previous case it even stated categorically that the sale is valid. (In re Testate Estate of the late Hilarion Martin, No. L–5049, October 31, 1953; 49 Off. Gaz., No. 12, pp. 5435, 5438; Beltran *vs.* Doriano, 32 Phil. 66; Favis *vs.* Serrano et al., 46 Off. Gaz., No. 2, p. 642).
4. LAND REGISTRATION; SALE OF UNDIVIDED PORTION OF HEREDITARY ESTATE; NON-REGISTRATION, EFFECT.—Where a vendee of an undivided portion of a hereditary estate fails to register the sale made in his favor by an heir, the failure to register is of no consequence. (Bienvenido Ibarle *vs.* Esperanza Po, L–5046, February 27, 1953).

APPEAL from an order of the Court of First Instance of Negros Occidental. Enriquez, *J.*

The facts are stated in the opinion of the Court.

Ross, Selph, Carrascoso & Janda, for claimant and appellant.

Jose M. Estacion, for administratix and appellee.

ANGELES, *J.:*

The antecedent facts which gave rise to the present appeal are as follows:

On February 8, 1939, claimant-appellant thru counsels filed a motion before the Court of First Instance of Negros Occidental in the proceedings for the settlement of the testate estate of the deceased Lorenzo Zayco, claiming that it had acquired at a public auction sale executed by the provincial sheriff of Negros Occidental all the rights, interests and participation of Emilio R. Zayco, as one of the heirs of Lorenzo Zayco, over lots Nos. 442, 340, 494, 575, 576, 2133, 2131, 569, 2166 and 487–B of the cadastral survey of Kabankalan, Negros Occidental, over two (2) parcels of land also located in Kabankalan with designation as to their lot numbers given in original certificate of title No. 6635 and lot No. 945 of the cadastral survey of Cauayan, Negros Occidental, all of which lots belong to and form part of the testate estate of Lorenzo Zayco then under settlement proceedings, and praying that it be substituted in the place and stead of Emilio R. Zayco in the parcels of land abovementioned, and that it be notified of all proceedings and actions that may be entered and taken by the administratrix and by the court on the said parcels of land.

On February 27, 1939, Flora Rubin, the widow of Lorenzo Zayco and the administratrix of his estate, opposed the motion of appellant on the ground that the lots mentioned are, and have been, *in custodia legis;* that the estate has not as yet been liquidated; and that the deed of sale executed by the sheriff in favor of appellant is null and void; but the court, in its order dated March 6, 1939, found the opposition of the administratrix to be groundless and ordered that annotation be entered on the back of the certificates of title covering the abovementioned parcels of land to the effect that appellant had acquired whatever right, title and interest Emilio R. Zayco may or might have in said parcels, and ordered the clerk of court, the parties interested in the settlement proceedings and their respective attorneys to notify thereafter the appellant of any motion, pleading, order or decision that may be entered or filed in the case.

On July 9, 1939, claimant-appellant filed another motion before the same court and in the same testate proceedings, claiming that it had acquired all the rights, interests and participation of Aquiles R. Zayco, as one of the heirs of his deceased father Lorenzo Zayco, over the parcels of land already mentioned through a public auction sale executed by the provincial sheriff of Negros Occidental, and praying that it be substituted in the place and stead of the heir Aquiles R. Zayco and be notified of all proceedings and actions that may be taken by the adminis-

tratrix and by the court on the parcels of land aforementioned.

The administratrix opposed the motion on the ground that the properties mentioned are, and have been, *in custodia legis* and that there had been no publication prescribed by law prior to the public auction sale of the lands. The court, in its order dated November 8, 1939, granted the prayer of appellant.

On January 10, 1955, claimant-appellant asked the court to issue an order requiring compliance with the orders thereof dated March 6, 1939 and November 8, 1939, alleging that since after the war it has not been served with the pleadings, orders and other papers in the settlement proceedings of the testate estate of Lorenzo Zayco. The prayer of appellant was granted.

On February 25, 1956, petitioner-appellee Zocorro Zayco, who succeeded Flora Rubin as administratrix of the estate of Lorenzo Zayco and who was appointed administratrix of the estate of Flora Rubin upon the latter's death in 1948, filed for approval of the court a project of partition of the conjugal properties of the deceased spouses Lorenzo Zayco and Flora Rubin in which the following remarks appear:

"All the heirs of the deceased spouses hereby manifest that they are agreeable to the way and manner by which the administratrix administered the properties of these two estates, and hereby express their desire that she be exempted or not required to file her final accounts. * * *"

Claimant-appellant resisted the approval of the project of partition on the ground that the waiver of an accounting by the heirs is not complete because the Manila Trading & Supply Co., which has been substituted in the places of Aquiles R. Zayco and Emilio R. Zayco with respect to certain lots in the estates, has not made a similar waiver, hence, an accounting must be made before the project of partition should be approved; that the list of the real property set forth in the project of partition is not complete as it does not mention lots Nos. 442, 494 and 2166 of the cadastral survey of Kabankalan, the two (2) parcels described in original certificate of title No. 6635 and lot No. 95 of the cadastral survey of Cauayan. Appellant prayed for the disapproval of the project of partition and for an order requiring the administratrix to render a proper accounting and to explain what has become of lots Nos. 442, 494 and 2166 of the cadastral survey of Kabankalan, the two parcels described in original certificate of title No. 6635 and lot No. 95 of the cadastral survey of Cauayan.

On April 19, 1956, petitioner-appellee filed an answer to the opposition of claimant-appellant, stating that the claim for accounting is groundless because the lots over

which it claims to have succeeded in the rights of the heirs Emilio and Aquiles Zayco are intact; that the titles to the lots over which appellant claims to have some rights are clean of all and any encumbrances in its favor; that on September 23, 1954, petitioner-appellee as administratrix petitioned the court to cancel the encumbrances noted at the back of title No. 3106; that one of the lots covered by said title is lot No. 487–B of Kabankalan Cadastre over which appellant claims to have some rights by virtue of the order of the court on March 6, 1939 and November 8, 1939; that appellant opposed said petition; that despite said opposition by appellant the court ordered on February 16, 1955 the cancellation of the writ of attachment in favor of appellant and said order was maintained notwithstanding the motion for reconsideration filed by appellant; that in the same opposition by appellant it asked for the annotation on all the other titles of the deed of sale executed by the sheriff of Negros Occidental in its favor; that the court denied said petition of appellant; that lots Nos. 442, 340, 494 2166 of Kabankalan Cadastre, lot No. 95 of Cauayan Cadastre and those covered by original certificate of title No. 6635 are not properties of the estate and they do not appear in the inventory presented in the estate of Lorenzo Zayco and Flora Rubin.

In an order dated April 24, 1956, the court found the allegations of petitioner-appellee to be borne out by the records and overruled the opposition of claimant-appellant.

On May 4, 1956, claimant-appellant moved to set aside the order of April 24, 1956 on the ground that in a previous order, April 14, 1956, the court has set the hearing of the project of partition and the opposition thereto on April 28, 1956 to give the lawyers of claimant-appellant an opportunity to present their opposition; that appellant is in a position to prove that lots 442, 494 and 2166 of the cadastral survey of Kabankalan, the two (2) parcels of land described in original certificate of title No. 6635, and lot 95 of the cadastral survey of Cauayan all belong to the estate of Lorenzo Zayco and should therefore be included and accounted for in the project of partition. The court set aside its order of April 24, 1956.

On June 24, 1956, petitioner-appellee filed for approval of the court a partial project of partition stating that "In view of the claim of the Manila Trading & Supply Company over the rights and interests of the children Emilio and Aquiles Zayco in some of the lots of these two estates, the said lots are not hereby made the subject of this partition."

On July 24, 1956, claimant-appellant opposed the approval of the partial project of partition on the ground that the lots which have been left out may not be sufficient

to satisfy its claim; that it may turn out that claimant-appellant is entitled to more than the value of all the lots which are involved in the final deed of sale executed by the provincial sheriff of Negros Occidental and in such an event, and if the partial project of partition is approved, claimant-appellant would have no other properties to resort to.

The partial project of partition was not acted upon by the lower court. Instead, the lower court, on November 23, 1956, approved the project of partition filed by petitioner-appellee on February 25, 1956, after finding that the opposition of claimant-appellant thereto lacks merit. Appellant moved to reconsider the ruling, but the lower court maintained the same. Hence, the instant appeal.

First to be determined is the status in law of claimant-appellant with respect to the parcels of land over which it claims to have some right. Appellant contends, on the one hand, that it had acquired all the rights, interests and participation of Emilio R. Zayco and Aquiles Zayco, as heirs of their deceased father Lorenzo Zayco, over the thirteen parcels of land adverted to above; appellee maintains, on the other, that no rights were acquired by the claimant-appellant over said parcels because the sales executed by the provincial sheriff are void *ab initio*. Appellee's contention is saddled on the argument that the execution sales lacked the requisite publication prescribed by law. According to her, the notice of sale was published in the English newspaper "Commoner" only notwithstanding the circulation of a Spanish newspaper, the "Civismo", in the province of Negros Occdental prior to the sales of the lands.

It appears in evidence that on December 15, 1938 and on May 13, 1939 the provincial sheriff of Negros Occidental executed two "CERTIFICADOS DE VENTA DEFINITIVA" in which the rights and interests of Emilio R. Zayco and Aquiles Zayco over lots No. 442 (O.C.T. 20069), No. 340 (O.C.T. 20070), No. 494 (O.C.T. 20072), No. 575 (O.C.T. 25511), No. 576 (O.C.T. 25522), No. 2133 (O.C.T. 28271), No. 2131 (O.C.T. 28272), No. 569 (O.C.T. 28281), No. 2166 (O.C.T. 20990), No. 487–B (O.C.T. 22120), all of the cadastral survey of Kabankalan, Negros Occidental, over two parcels of land described in original certificate of title No. 6635, also located in Kabankalan, and lot No. 945 of the cadastral survey of Cauayan, Negros Occidental (O.C.T. 27770) were deeded in final sales to claimant-appellant. Said execution sales were made to satisfy the judgment which claimant-appellant had obtained against Emilio R. Zayco and Aquiles Zayco in the Courts of First Instance of Iloilo and Manila, respectively. (See Annex B of Schedule B and Schedule E, Record on Appeal). There is no question that an heir may sell his hereditary

rights to a third person before partition of the estate (Art. 1088, Civil Code), or that said rights may be attached by a judgment creditor (Sec. 9, Rule 59, Rules of Court), or caused to be sold on execution (Gotauco and Company *vs.* Register of Deeds of Tayabas, 59 Phil. 756). And one who purchases real property in execution sale shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor thereto, subject to the right of redemption. (Sec. 24, Rule 39, Rules of Court; Cabuhat *vs.* Ansay, 42 Phil. 170, 173; Laxamana *vs.* Carlos, 57 Phil. 722; Lim Liin Uan *vs.* Laag, 51 Phil. 930; Villegas *vs.* Tan, 57 Phil. 656; Cruz *vs.* Sandoval, 69 Phil. 736; Barrido *vs.* Barreto, 72 Phil. 187). By virtue of the execution sales therefore, appellant acquired whatever rights Emilio R. Zayco had over the parcels belonging to the estate of their deceased father Lorenzo Zayco.

As the main prayer of appellant, however, is for an accounting to be rendered by petitioner-appellee as administratrix, it becomes important and necessary to determine whether or not all the thirteen parcels of land mentioned above belong to the estate of Lorenzo Zayco. Appellant insists that all thirteen lots form part of the inheritance of the deceased Lorenzo Zayco; appellee contends that only some of the thirteen lots appear to be included in Lorenzo Zayco's estate. The lower court gave appellant ample opportunity to substantiate its claim that all the thirteen lots are embraced in the estate of Lorenzo Zayco, but that notwithstanding it failed to adduce evidence on that score. All that the appellant did was to capitalize on some loose and vague statements made by petitioner-appellee. We are of the opinion that appellant's effort was not enough to overcome the record which shows that not all the thirteen lots are included in the estate of Lorenzo Zayco. In the "INVENTARIO DE LOS BIENES RELICTOS" of Lorenzo Zayco submitted by commissioners Antonio Velez and Rogaciano Albayda on October 25, 1935 and the accompanying inventory presented by the petitioner-appellee in connection with the project of partition filed by her on February 25, 1956, only lots Nos. 340, 569, 575, 2131, 2133, 576 and 487–B, all of Kabankalan Cadastre appear to be included in the estate of Lorenzo Zayco. (See Schedule A and Schedule J, Rec. On App.). Be that as it may, appellant's right to the said seven lots have attached by virtue of the execution sales made in its favor. As stated, all the rights and interests of the heirs Emilio R. Zayco and Aquiles Zayco, devolving upon them upon the death of their deceased father Lorenzo Zayco, must be deemed to have been acquired by appellant. And appellant must be considered to have acquired in ownership not only the aliquot portions

pertaining to Emilio R. Zayco and Aquiles Zayco, as heirs of their deceased father Lorenzo Zayco in the seven lots aforementioned (Ladislao *vs.* Pestano, G. R. No. L–7623, April 29, 1955; 51 Off. Gaz., 2402, May), but also the fruits accruing thereto since the opening of the succession (Art. 781, Civil Code). By devolution or descent, an heir is entitled from the moment of death of the decedent to the entire inheritance which includes not only the property and the transmissible rights and obligations existing at the time of his (decedent's) death, but also to those which have accrued thereto since the opening of the succession (Arts. 777 and 781, Civil Code).

It is the stand of appellee that the deeds of sale executed by the provincial sheriff in favor of appellant are null and void because, according to her, the requisite publication prescribed by law has not been complied with. This question has been passed upon by the court below. In her opposition to the motion of appellant dated July 9, 1939, Flora Rubin, administratrix of the testate estate of Lorenzo Zayco, raised this question and also contended that the properties cannot be sold on execution because they were in *custodia legis*. In spite of said opposition, the lower court ordered the annotation on the back of the titles of the lots claimed by appellant of the rights acquired by it in the public auction sales. From that order of the lower court, petitioner-appellee or her predecessor did not interpose any appeal. Hence, the question respecting the validity of the sales must be considered settled. However that may be, we find untenable the claim of petitioner-appellee that the execution sales are null and void. The question of publication is a matter of evidence. To overcome the presumptions of regularity in the sales executed by the provincial sheriff and approved by the court, he who assails such sales must adduce convincing evidence to buttress his claim. Appellee contends that there was no sufficient publication prior to the execution sales by the provincial sheriff. She did nothing to substantiate her claim, however, but set forth a bald and naked assertion that in spite of the existence in the province of Negros Occidental of a Spanish and English newspaper the notice of sale was published only in the latter. For want of evidence, the claim of nullity of sales must fail.

The position adopted by the appellee as regards the status of the properties at the time of the execution sales is likewise not well-taken. It cannot be said that an heir cannot sell or a creditor cannot attach the indivisible and indeterminate share in the inheritance because it is in *custodia legis*. Passing upon an identical question, the Supreme Court said that if what the heir conveyed was merely his rights and interests as an heir in a portion

of the hereditary estate, the sale is not necessarily void, although it should be held subject to the result of the administration proceedings. In a previous case it even stated categorically that the sale is valid. (In re Testate Estate of the late Hilarion Martin, No. L–5049, October 31, 1953; 49 Off. Gaz., No. 12, pp. 5435, 5438; Beltran *vs.* Doriano, 32 Phil. 66; Favis *vs.* Serrano et al. 46 Off. Gaz., No. 2, p. 642).

It is contended that appellant cannot demand for an accounting because the properties of the estate of Lorenzo Zayco are clean of any incumbrances. In support of this contention, the argument is advanced that the lower court ordered the cancellation of the writs of attachment in favor of appellant on the back of all the certificates of title over which appellant claims to have acquired some right. Also, it is claimed that the titles of the estate of Lorenzo Zayco do not bear any encumbrances because appellant failed to annotate on the back of said titles the rights that it had acquired.

From the answer of petitioner-appellee to the opposition filed by claimant-appellant when the project of partition was presented for approval on February 25, 1956, it appears that petitioner-appellee previously asked for the cancellation of the encumbrances noted at the back of title No. 3106, and that one of the lots described therein is lot No. 487–B of the cadastral survey of Kabankalan. Claimant-appellant opposed that petition, but the lower court ordered the cancellation of the writs of attachment on the back of the aforesaid title. There is no evidence, however, that title No. 3106 includes the other lots claimed by appellant. It is, therefore, not accurate for appellee to state that all the titles of Lorenzo Zayco's estate over which appellant claims to have some right have been purged of any and all encumbrances by reason of the cancellation of the writs of attachment. Even the cancellation of the writ of attachment on lot 487–B cannot obliterate the rights acquired by appellant therein, because as appellant pointed out the writ of attachment was superseded by the execution sales made by the provincial sheriff.

Articles 50 and 51 of Act No. 496, otherwise known as the Land Registration Act, are invoked to support the claim that the execution sales cannot affect the titles of Lorenzo Zayco's estate since the said sales were not registered or annotated. In a case where a vendee of an undivided portion of a hereditary estate failed to register the sale made in his favor by an heir, our Supreme Court observed that failure to register is of no consequence. (Bienvenido Ibarle *vs.* Esperanza Po, L–5046, February 27, 1953). With more reason must the observation have efficacy in the instant case where the co-heirs of Emilio and Aquiles Zayco not only did not

interpose any objection to the execution sales conducted by the provincial sheriff but also failed to appeal from an order of the court granting the prayer of claimant-appellant to annotate on the back of the certificates of title the rights which it had acquired by reason of said sales. Be that as it may, there is evidence that appellant did not fail to annotate its right on the back of the certificates of title. The Register of Deeds of Negros Occidental, answering the letter of appellant's counsel, stated that proper notations were made. Thus wrote the Register of Deeds: "In answer to your letter of the 11th inst. (April, 1956), please be informed that we made proper notations on the originals of Original Certificate of Title Nos. RO–392(25511), RO–593(25522), RO–6192 (2827), RO–6191(28272), RO–872(28281) and Transfer Certificate of Title No. RT03106(22120), covering Lots Nos. 575, 576, 2133, 2131, 569 and 487–B, all of the Cadastral Survey of Kabankalan, the above-mentioned certificates of sale. * * *" (Annex A, Schedule U, Rec. on App.).

By virtue of the execution sales appellant was subrogated to the rights and interests of the heirs Emilio and Aguiles Zayco. As such, appellant is entitled to an accounting to be rendered by the administratrix of the estate of Lorenzo Zayco pursuant to Rule 86 of the Rules of Court. The waiver of an accounting by the administratrix made by the other heirs cannot bind claimant-appellant who not only did not agree thereto but vehemently opposed the same. Petitioner-appellee as administratrix must account for the seven lots at least because an executor or administrator is accountable for the whole of the estate of the deceased which has come into his possession (2 Moran 415, citing cases). It would not be in harmony with an equitable distribution of the estate if one who is lawfully entitled to a portion thereof is not apprised of the extent of his participation.

WHEREFORE, the judgment appealed from is hereby reversed, and another one is hereby entered ordering the appellee to render an accounting of her administration of the estate of Lorenzo Zayco and Flora Rubia, deceased, respecting lots Nos. 340, 569, 575, 2131, 2133, 576 and 487–B of the cadastral survey of Kabankalan, Negros Occidental, giving to all persons interested, including the claimant-appellant Manila Trading and Supply Co., notice of its filing and the time and place of its examination and allowance by the probate court. No pronouncement as to costs in this instance.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment reversed.

[No. 19132-R. July 23, 1958]

GOOD GOLD COMPANY, plaintiff and appellee, *vs.* ALLIANCE INSURANCE & SURETY COMPANY, INC., defendant and appellant.

1. PARTNERSHIP; PARTNERSHIP AT WILL; AGREEMENT TO CONTINUE PARTNERSHIP AFTER EXPIRATION VALID.—A partnership under written articles may be renewed by an oral or tacit agreement of the parties. (Art. 1785, Civil Code). By the aforesaid provision of the law, it is settled that when a partnership for a fixed term is continued thereafter, without any new agreement between the parties and without any settlement or liquidation of the partnership affairs, it becomes a partnership at will, and the original partnership contract remains in force so far as its provisions are consistent with the incidents of a partnership at will.

2. INSURANCE; FIRE CLAIMS; PRIMA FACIE EVIDENCE OF UNREASONABLE DELAY IN PAYMENT; SECTION 2, REPUBLIC ACT NO. 487.—An insurer's failure to take action on a fire claim, notwithstanding repeated demands therefor, within a period of almost one year from the filing of the claim, is tantamount to its refusal to pay the claim. This opinion of the court finds support in the provisions of Section 2 of Republic Act No. 487 which regulates payments of claims in property insurance providing for a period of two months as the time within which an insurer should pay a fire claim, and further providing that "the lapse of two months from the occurrence of the insured risk will be considered *prima facie evidence* of unreasonable delay in payment, unless satisfactorily explained."

3. ID.; ID.; VALUED POLICY; TOTAL LOSS; VALUATION IN POLICY CONCLUSIVE.—In a valued policy, in case of total loss, the valuation in the policy, in the absence of fraud in the valuation, is conclusive between the parties in the contract of insurance, and the liability of the insurer is thus measured. (Vide, section 163 in conjunction with section 149 of the Insurance Law.)

APPEAL from a judgment of the Court of First Instance of Cebu. Mejia, *J.*

The facts are stated in the opinion of the Court.

Vicente L. Arciaga, for defendant and appellant.

Castillo, Torrefranca & Enjambre, for plaintiff and appellee.

ANGELES, *J.:*

A suit to recover from the defendant insurance company the sum of ₱20,000 representing the face value of defendant's fire insurance policy No. F–5276 covering plaintiff's stock in trade against loss or damage by fire for the period from 19 March 1953 to 19 March 1954.

Defendant-appellant did not make a statement of facts in its brief. The facts of the case are as follows: On March 14, 1948, Tan Jon Tam, See Yek, Tan Bui, Cui Bing and Sy Yee Ho organized a partnership under the firm name of "Tan Jon Tam & Company" with a capitalization of ₱70,000, for a period of five (5) years from and

after the said date, adopting "Good Gold Company" for its business name. The partnership established its store at the Quirino Rodriguez Building situated at the corner of Juan Luna and Colon Streets, Cebu City. Upon the expiration of the partnership term, which was February 14, 1953, by unanimous consent of the partners they agreed to continue the business as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs. In fact, when on March 19, 1953, the defendant insurance company issued its fire policy in favor of the insured partnership, the latter's business was going on in full swing at the Quirino Rodriguez building.

On March 19, 1953, defendant insurance company issued to plaintiff its Fire Policy No. 5276 for ₱30,000 to cover plaintiff's stock in trade consisting principally of dry goods, *chucherias*, toiletries and other items usually carried by department stores. On the same date, however, the face value of the policy was reduced to ₱20,000; and on even date, plaintiff paid to defendant one year's premium on the policy amounting to ₱364.78.

At about midnight of November 16, 1953, the Quirino Rodriguez Building was destroyed by fire. As a consequence thereof, the entire contents of plaintiff's business establishment was totally destroyed. After an investigation by the proper authorities as to the origin or cause of the fire, the Fire Clearance Board of Cebu City, composed of the Fire Department, issued to plaintiff a certificate of clearance.

On November 17, 1953, plaintiff filed a notice of loss with the Cebu branch manager of defendant company, and the latter in turn gave to plaintiff an official form for fire claim to be filled, which plaintiff duly accomplished on November 28, 1953. Upon request of defendant, the plaintiff submitted an estimated inventory of the stock of merchandise lost in the fire showing a stock worth ₱63,917.30, duly supported by the affidavit of Tan Jon Tam, the managing partner, as to its correctness. Plaintiff also submitted to the Manila Adjustment Company, Manila, adjusters for defendant company, the aforesaid inventory and affidavit. The adjusters in turn required the plaintiff to submit certified copies of its income tax return for 1951 and 1952, financial statements for the same period, copies of invoices and certificates of suppliers covering plaintiff's stock during the period from January 1 to November 16, 1953, a statement of sales for the same period duly certified by the city treasurer of Cebu, and a police clearance. Plaintiff could not comply with the request to submit a statement of sales certified to by the city treasurer because the latter's office had no record

of the sales of plaintiff, but the othe rrequirements of the adjusters were, however, complied with by plaintiff.

Notwithstanding the lapse of considerable time, defendant insurance company failed to take any definite action on plaintiff's claim. Defendant's reasons, as given by its sole witness Felix Panganiban, are: That defendant had not refused to pay plaintiff's claim; that it had not yet paid the claim because its counsel had requested plaintiff to submit a verified statement of loss; that the basis for such request was the policy provision granting the option to replace plaintiff's insured goods instead of paying in cash; that said demand was also predicated on parargraph eleven (11) of the policy; that failure to comply with the said requests resulted in forfeiture of the benefits under the policy; that the insurer had requested for the statement of loss because it had received report from the adjuters to hold action on the claim due to an alleged case pending before the National Bureau of Investigation; and that granting that defendant is liable to pay on the policy, its liability should only be ₱16,000 as in the case of the policy of the Yek Tong Lin Fire & Marine Insurance, Ltd.

On cross-examination, the same witness for the defendant declared that, it did not receive plaintiff's fire claim; that when it received the notice of loss, no statement of other insurance was included therein; that defendant had not received any report from the NBI regarding any arson on the Quirino Rodriguez building; that notwithstanding the replacement option in its standard form of policies, it had never in the past exercised such option.

Upon the foregoing facts, the trial court rendered judgment in favor of the plaintiff and against the defendant ordering the latter to pay to he former the sum of ₱20,000 with interest thereon at the rate of 12 per cent per annum from November 15, 1954, until fully paid, plus an additional amount of ₱2,000 for attorney's fees and expenses of litigation, and for the costs of the suit.

The first question posed by defendant-appellant in its brief is, as to plaintiff's legal capacity to sue, citing the fact that as the articles of partnership stipulated that its term shall be for five (5) years and this period had expired on February 14, 1953, that it lacked juridical personality when it filed this action on November 13, 1954.

The contention is without basis in fact and in law. The uncontradicted evidence is, that upon the expiration of the five years term of the partnership, by unanimous consent of the partners they agreed to continue the business of the partnership as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs. In fact, when the defendant insurance company issued its fire policy on March 19, 1953, it found plaintiff's

establishment in full operation with stock in trade such as dry goods, *chucherias,* toiletries and other items usually carried by department stores. And on the basis of its investigation, defendant issued its fire policy in favor of the plaintiff. The agreement of the partners to renew the partnership was perfectly legal. A partnership under written articles may be renewed by an oral or tacit agreement of the parties. This is expressly sanctioned in Article 1785 of the Civil Code which reads thus—

"When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement the rights and duties of the parties remain the same as they were at such termination, so far as is consistent with a partnership at will.

"A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is *prima facie evidence* of a continuation of the partnership."

By the above-quoted provision of the law, it is settled that when a partnership for a fixed term is continued thereafter, without any new agreement between the parties, it becomes a partnership at will, and the original partnership conract remains in force so far as its provisions are consistent with the incidents of a partnership at will. When said insurance company issued its policy in favor of the plaintiff, it must be presumed that it acted with full knowledge of the fact and the situation of the parties. Hence, the complaint may be treated as one brought in the name of the individual partners or in the firm name of the partnership. The substitution, then, is not in reality the substitution of one identity for another, of one party for another, but it is simply to make the form express the substance. The substance is there. It appears all through the proceedings. The defendant has not been misled by the error in the name of the party plaintiff. "There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice." (Alonso *vs.* Villamor, 16 Phil., 315, 321; Chua Kiong *vs.* Whitaker, et al., 46 Phil., 578.)

Under the thesis that appellee violated the conditions of the policy, and therefore, it forfeited all benefits thereunder, appellant, in its second assignment of error, invites our attention to the following: (*a*) the failure of the insured to make a declaration under oath concerning the truth of its fire loss; (*b*) the failure of the insured to disclose in its claim the other insurances on the goods insured carried at the time the claim was filed, contending that non-compliance with either or both requirements had produced

the forfeiture of the benefits under the policy; and (*c*) that as appellant had not refused to pay plaintiff's claim, "But has chosen to exercise the right under the insurance policy to secure a declaration under oath concerning the claims of the plaintiffs" (Vide, p. 6, appellant's brief), that plaintiff's cause of action had not yet accrued, and the case should, therefore, be dismissed.

Neither one or the other of appellant's contention is sustainable under the facts of the case. The fire claim submitted to the insurer clearly states that the fire was "of an undetermined origin coming from the second floor of the building", which was supported by the affidavit of Tan Jon Tam, managing partner of the plaintiff. As a consequence thereof, the entire contents of plaintiff's establishment was totally destroyed. This fact was known to the defendant. And the insured likewise submitted to the defendant, its agent and adjusters an estimated inventory of the stock in trade lost in the fire supported by the affidavit of the managing partner, and such other documents which will fully apprise the insurer of its rights and liabilities. The insured in good faith furnished the defendant, its agents and adjusters substantial proof of loss which it believes to be sufficient, and the insurer, defendant herein, did not make any objection to any one of them, but merely adopted a policy of inaction and silence. With regard to the alleged non-disclosure of other insurances on the insured goods, the fire claim which was accomplished on an official form for fire claims furnished by the branch manager of the insurance company clearly discloses on its face other insurances obtained from other companies, such as, the Yek Tong Lin Fire & Marine Insurance, Ltd., and The Union Surety & Insurance Co., Inc., in the amounts of ₱20,000 and ₱10,000, respectively. And in respect to the alleged premature filing of the case, it appears that at the time of the commencement of this suit on November 15, 1954, defendant had not yet definitely acted on plaintiff's claim although the latter had filed its claim with the defendant's Cebu branch manager since November 28, 1953. Plaintiff had substantially complied with the requirements imposed either by the defendant, its agent or its adjusters. It is the opinion of this Court that defendant's failure to take action on plaintiff's claims, notwithstanding repeated demands therefor, within a period of almost one year from the filing of the claim, was tantamount to its refusal to pay the claim. This opinion of the Court finds support in the provision of section 2 of Republic Act No. 487 which regulates payments of claims in property insurance providing for a period of two months as the time within which an insurer should pay a fire claim, and further providing that "the

lapse of two months from the occurrence of the insured risk will be considered *prima facie* evidence of unreasonable delay in payment, unless satisfactorily explained".

The record fails to disclose any reasonable justification for the failure of the insurer to pay within a reasonable time plaintiff's claim. As aptly observed by the trial court, "from the tenor of Mr. Panganiban's testimony, it would seem that defendant's conduct in this case was motivated not so much by a rightful feeling on non-liability on plaintiff's claim, but rather due to a desire that if it should be liable on the claim, it should be so only to the extent of ₱16,000, as in the case of the policy of the Yek Tong Lin Fire & Marine Insurance, Ltd., for exactly the same amount of ₱20,000 which was extrajudicially settled by the said company and plaintiff for ₱16,000. It is not, therefore, far-fetched to conclude that defendant's dilatory tactic on plaintiff's claim was due to its desire to drive a wedge into the negotiation, in order to compel the plaintiff to propose or accept a settlement for ₱16,000 as it did with the Yek Tong Line Fire & Marine Insurance, Ltd."

"In view of the lapse of almost one year from the occurrence of the insured risk, and considering defendant's conduct in the case, the Court, therefore, finds and holds, that defendant's refusal to settle plaintiff's claim was unreasonable. As such, defendant should, therefore, be sentenced to pay to plaintiff not only for the face value of the policy, * * * but also for reasonable counsel fees and expenses in litigation, which the Court hereby fixes at ₱2,000. (Section 2, Republic Act No. 487)."

The evidence on record and the circumstances surrounding the case sufficiently sustain the foregoing conclusion of the learned trial judge, and We are of the opinion that in concurring with it, We are simply applying the law on the facts as the defendant has created them. We are merely performing a simple duty which does exact justice to the litigants.

Lastly, in the third assignment of error, appellant assails the probative value of the documents presented by the plaintiff and admitted by the trial court. We have carefully considered the argument advanced by appellant and We find that the trial court did not err in admitting the questioned documents either as evidence in themselves or as part of the testimony of the witness who identified them. At no time during the trial did the defendant object to their competency and admissibility in evidence, and assuming that some of them were objectionable in some phases, the court cannot *motu propio* disregard them. Objection must be made seasonably. This was not done by appellant. The objection now raised for the first time in this appeal as to their admissibility in evidence is out of place. The evidence having been admitted, it becomes the

function of the court to determine their probative value, and in this connection We find that all the documents objected to by the appellant were presented to substantiate the claim of the appellee that it had done all that was required of it by the defendant, its agent or adjusters. The original invoices could not be produced because as stated in the affidavit of the managing partner they were destroyed during the fire, and the plaintiff did its best to comply with defendant's request to submit copies of invoices and certificates of suppliers covering the goods claimed to have been destroyed by the fire in question.

The contention that Exhibits P, P–1 to P–46 bear dates subsequent to the occurrence of the fire does not, on the face of the documents themselves, go to prove that purchases were made after the fire. Said exhibits on their face show that they contained itemized statements of purchases made by the plaintiff from January to November 16, 1953, and the alleged dates appearing thereon after the occurrence of the fire merely indicated the date of issuance or certification of the exhibits.

Upon all the facts of the case, We are persuaded that plaintiff-appellee has established its case. All the contents of plaintiff's establishment have been destroyed by fire of an undetermined origin, and not even a shadow of suspicion of a wrongful act connected with the fire has been attributed to the insured. The estimated value of the stock in trade destroyed in the fire amounted to about ₱63,917.30, which is more than the face value of the combined insurance over the merchandise insured. Hence, plaintiff's right to recover the face value of the insurance in question is beyond question. In a valued policy, in case of total loss, the valuation in the policy, in the absence of fraud in the valuation, is conclusive between the parties in the contract of insurance, and the liability of the insurer is thus measured. (Vide, section 163 in conjunction with section 149 of the Insurance Law.)

WHEREFORE, the judgment appealed from is hereby affirmed with costs against the appellant.

IT IS SO ORDERED.

Natividad and *Sanchez, JJ.*, concur.

Judgment affirmed.